Guide to Creating Electronic Appellate

I. Briefs
II. Appendices
III. Hyperlinking

California Courts of Appeal
5/1/2016

Introduction

This guide was created to help filers provide working electronic briefs to the Courts of Appeal and the Supreme Court in California. While there are other products that can produce the same result, this manual focuses on Word (2007, 2010 and 2013) and Adobe Acrobat Pro. Some of these steps may be similar in other programs.

Be sure to check all rules with the court you are filing with to make sure you have met all the requirements for electronic documents.

Bookmarks and consecutive pagination are required by some courts and will, in the near future, be required by all Courts of Appeal.

E.g., each topic heading in the table of contents or index for each document, including the heading "Table of Contents" or "Index", must be electronically bookmarked. Document pages must be consecutively numbered beginning from the cover page of the document and using only the Arabic numbering system, as in 1, 2, 3.

I. Creating Electronic Appellate Briefs

Tools

Word processor

The primary tool for creating an electronic brief is your word processor. Microsoft Word provides some helpful features that make creating an electronic brief easier. In particular, Word's Styles feature (see *Generating Bookmarks* below) allows you to create headings in your brief that will automatically create bookmarks when you convert the document as a PDF.

Adobe Acrobat Standard or Pro

Adobe Acrobat sets the standard for creating, combining, editing, redacting and making PDFs searchable. And eventually you will need to do all of these things if you are working with electronic briefs. There are other less expensive PDF software programs, but you will find a variety of resources to assist you with Adobe Acrobat. For example, Adobe hosts a free Acrobat for Legal Professionals Blog that provides tips and techniques for working with electronic legal documents. Adobe Acrobat Standard will do everything that you need a PDF program to do—except for redacting PDFs. You will need the more expensive Adobe Acrobat Pro if you want to redact documents electronically.

Basic Steps

There are three basic steps to creating an electronic brief for California appellate courts:

1. Convert your brief from the original word processing document, such as Word, WordPerfect or Pages, directly to PDF (do not scan the brief to create a PDF).
2. Create bookmarks[1] from the Table of Contents.
3. Redact any information that must be redacted under the rules, like social security numbers, children's names, bank account numbers, etc.

If you do not have an appendix or attachment, just save your document as a PDF. You can skip step 3 above if your document does not contain any information that must be redacted.

Brief Pagination

Before saving/converting the brief as a PDF, make sure to number the pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3. Every page must have a number. Do *not* use a separate pagination system for tables within the document. The page number does not need to appear on the cover page.

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[1] Bookmarks are a fast and easy way to quickly navigate to different parts of a brief.

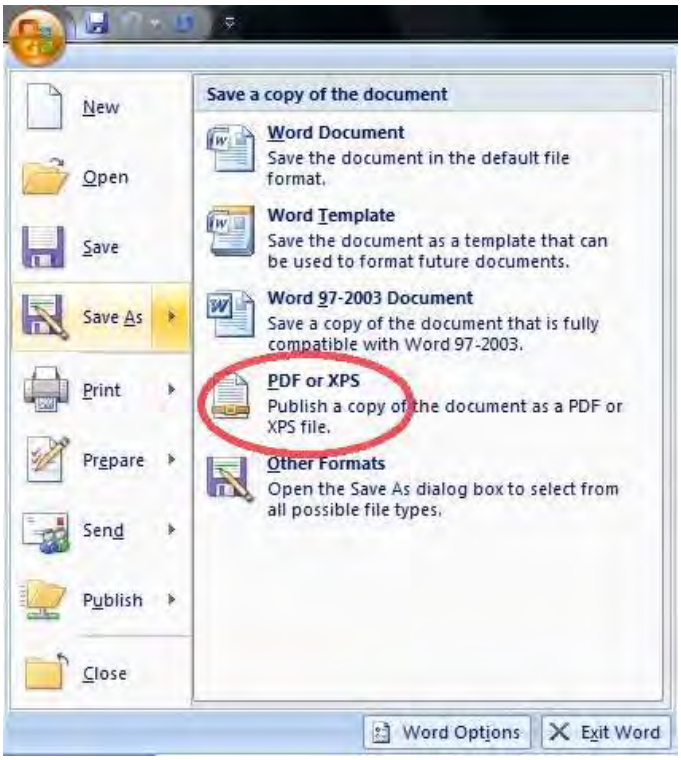
1. Saving/Converting directly to PDF

You can easily save your Word document as a PDF.

Word 2007 (without Adobe Acrobat Pro installed)

Click the Microsoft Office Button in the top left hand corner of Word.

Choose **Save As** and **PDF or XPS** (see below).



In the dialog box that appears, click the button in the lower right hand corner that says **Publish**.

Word 2007 (with Adobe Acrobat Pro installed)

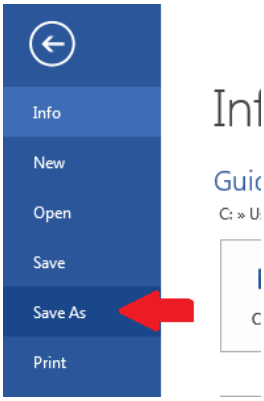
Choose **Save As** and **Adobe PDF** (see below).

A dialog box appears that says **Acrobat PDFMaker needs to save the file before continuing. Do you want PDFMaker to save file and continue?** Choose **Yes**.

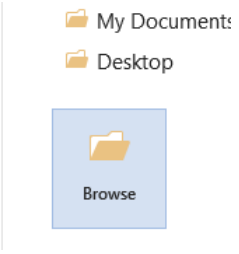
Word 2010 and 2013

Click on the **File** tab.

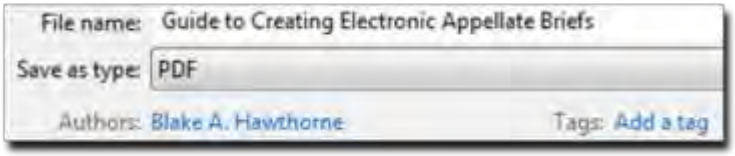
Choose **Save As**.



Click **Browse**



In the dialog box that appears, choose the Save as type = PDF.



Click **Save**.

Adobe Acrobat Ribbon in Word

If you have installed Adobe Acrobat, you also have the option of using the Acrobat ribbon to create a PDF in Word. When you install Adobe Acrobat, the installer adds Acrobat buttons or menu commands to Microsoft Office applications (e.g., Word, Excel, PowerPoint). In Word 2007 and 2010, in the ribbon at the top of the screen you should see **Acrobat** next to **View**. Selecting **Acrobat** reveals the Acrobat ribbon.

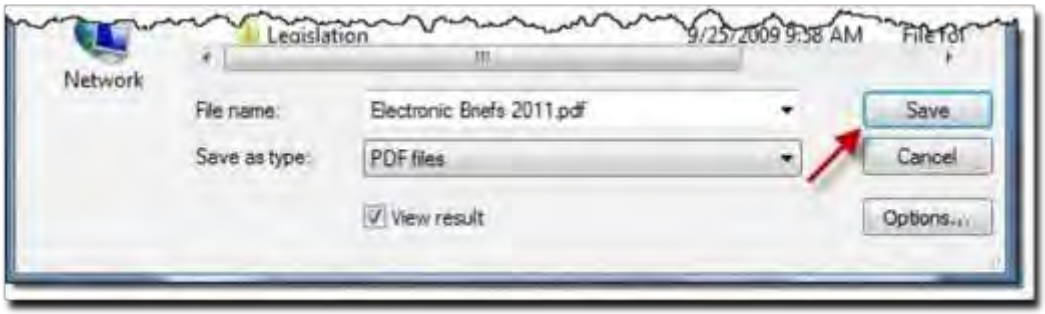
The advantage of using the Acrobat Ribbon to create PDF from Word is that it will automatically create bookmarks for your document if you have used Word's Styles feature.

Follow these steps to convert your brief directly to Word using the Acrobat ribbon:

Choose **Acrobat** at the top of the screen (to the right of **View**).

Click **Create PDF** in the menu.

In the dialog box that appears, click **Save**.

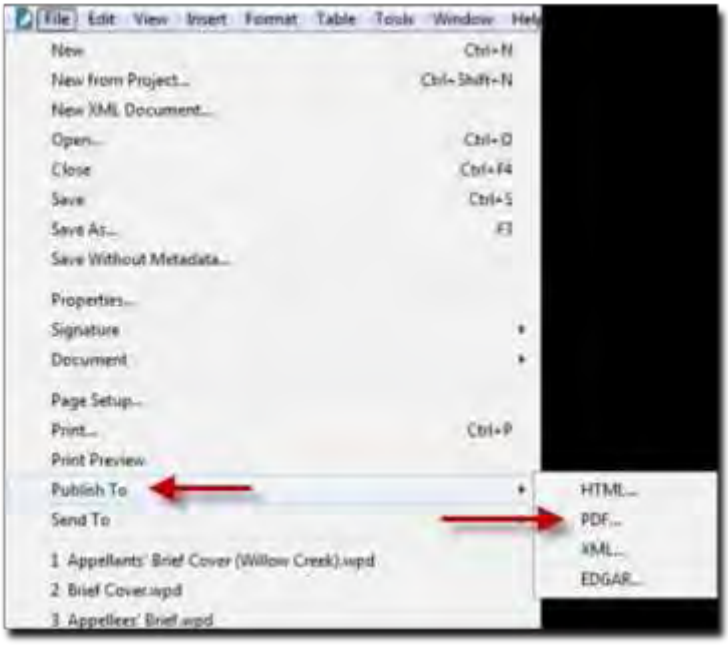


WordPerfect

WordPerfect implemented a Publish to PDF tool beginning with WordPerfect 9. The tool has been changed several times, so depending on which version of WordPerfect you are using the steps may be slightly different.

In WordPerfect 9 to WordPerfect X3, follows these steps to directly convert your brief to PDF:

Click **File**.
Select **Publish To** and **PDF**



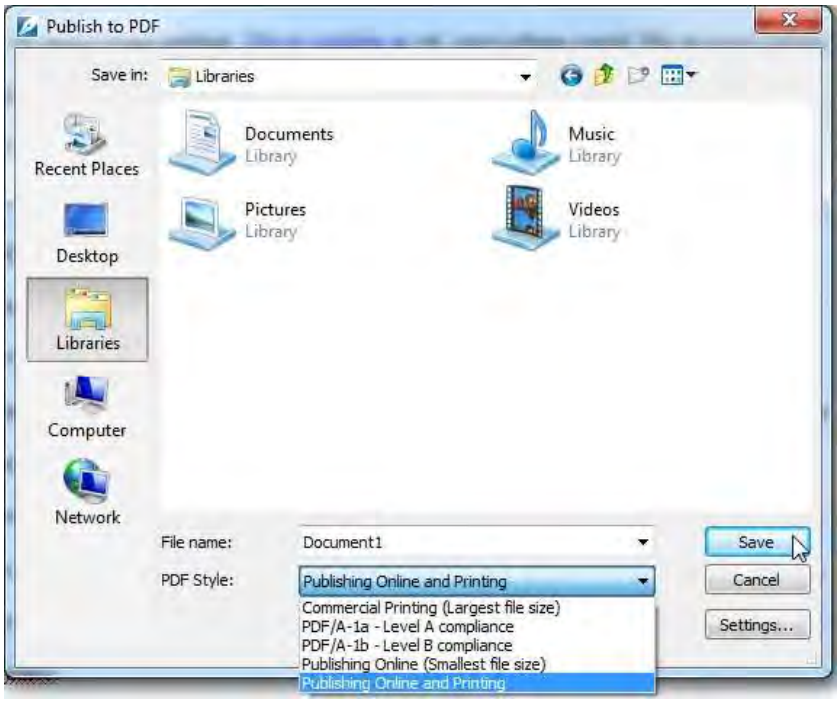
In the dialog box that appears, select the button that says **OK**.

In WordPerfect X4 and later, follow these steps to directly convert your brief to PDF:

Click **File**

Select **Publish to PDF**

Select the PDF Style. If you have hyperlinks in your document, you will want to select the PDF Style Publishing Online and Printing, which is the default style. Federal courts may require you to select PDF/A, which is an archival format. If you select PDF/A, your hyperlinks will not work.



Click **Save**

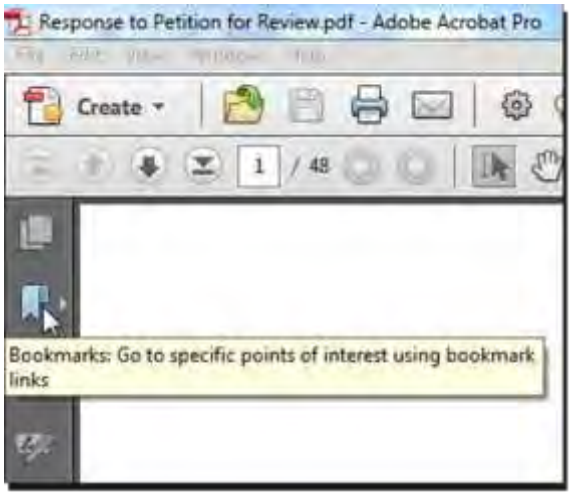
When printing a hard-copy of a brief, be sure to use the PDF file to insure that the print exactly replicates the e-file version. Pagination and sentence structure may change when converting a Word or WordPerfect document to a PDF.

2. Create bookmarks.

What is a bookmark?

A bookmark is a text link that appears in the **Bookmarks Panel** of Adobe Reader and Adobe Acrobat. Readers can use the bookmarks to quickly navigate to different sections of a brief. Make sure to include bookmarks in all electronic documents and be sure to use descriptive labels for your bookmarks (e.g. Trial Court Judgment, Court of Appeals Opinion) as illustrated below.

To see the **Bookmarks Panel**, open the **Navigation Pane** and click on the **Bookmarks Icon.**



Clicking on the **Bookmarks Icon** opens the **Bookmarks Panel** revealing the list of bookmarks, as in this illustration.

Setting the bookmarks panel to open automatically.

To maximize the impact of your brief:

While the document is open, click **File > Properties > Initial View tab**
Click the Navigation tab dropdown and select **Bookmarks Panel and Page**
Click **OK**

Generating bookmarks

Adobe Acrobat will also automatically generate bookmarks during PDF creation if you use Microsoft Word's built-in Styles feature when you create your document. In other words, if you use the paragraph styles available in Word to label the headings in your document, when you use the built-in Acrobat ribbon to generate your PDF, your document will already include bookmarks to the headings in your document.

A tutorial on Word's Styles feature is beyond the scope of these instructions, but Microsoft provides a tutorial on the web. Word's Styles feature is a tremendous time saver for generating bookmarks, the table of contents, and formatting your document.

Manually adding bookmarks

To manually add a bookmark, in Adobe Acrobat, follow these steps:

1. Click on the page where you want to create a bookmark
2. Click the **New Bookmark** Icon in the Bookmarks Panel or select **CTRL** and **B** keys on your keyboard at the same time.
3. In the text of the new bookmark, type the name or label that you want to give the bookmark.

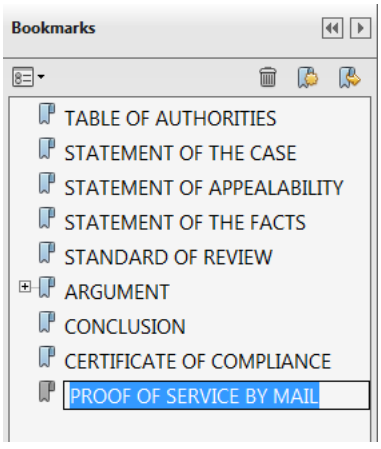
OR

Highlight the text on the page you want to bookmark, then press the **CTRL** and **B** keys on your keyboard at the same time (or right click and select add bookmark). The bookmark will appear in the panel and the name will be the same as the text you highlighted.

Editing bookmarks

If you want to delete a bookmark, **select the bookmark** and press the **delete key**.

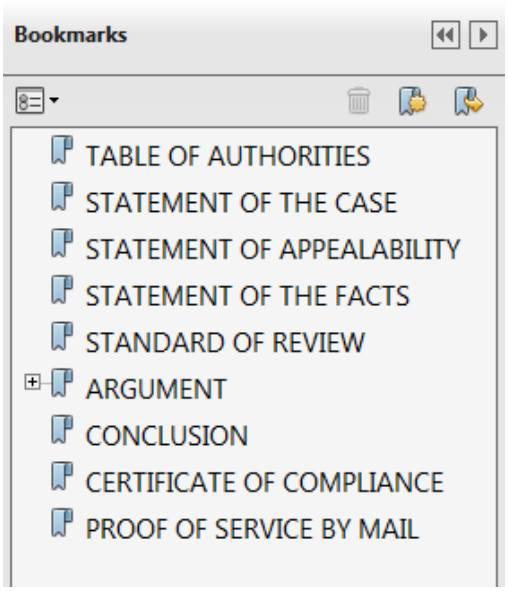
To edit the name of a bookmark, **double click** on the **bookmark**. Once the bookmark text is highlighted, you can **retype the name** of the bookmark. **Press enter** or return when you are satisfied with the results.



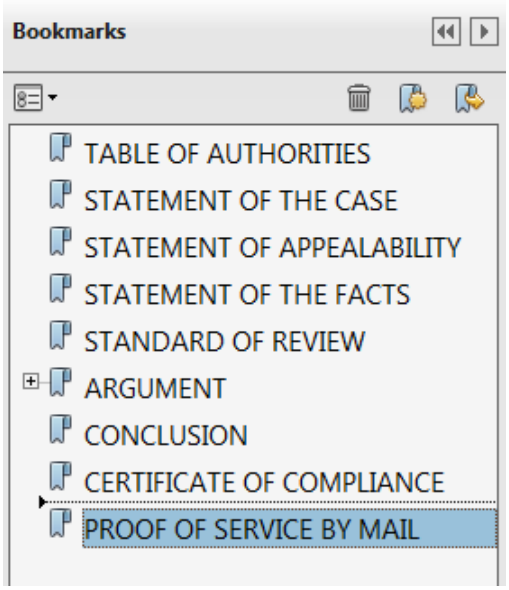
Be sure to give your bookmarks meaningful and descriptive names. Names like Header A, Header B, etc. are not helpful. Instead try something like Statement of the Case, Conclusion.

Moving bookmarks

To move bookmarks up and down in the Bookmarks Panel, left click and drag the bookmark ribbon symbol on the left side of the bookmark's name to the desired location in the Bookmarks panel. Once the arrow and dotted line are in the new location, release the left mouse button to drop the bookmark in its new location.



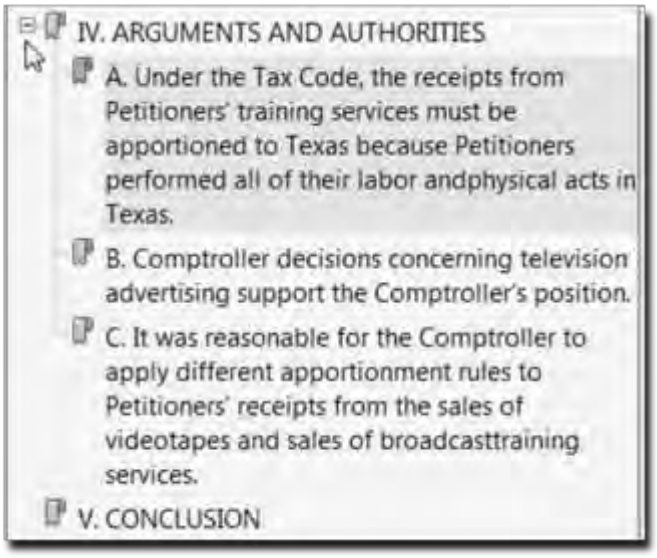
Step 1: Click on the ribbon symbol to the left of the bookmark name.



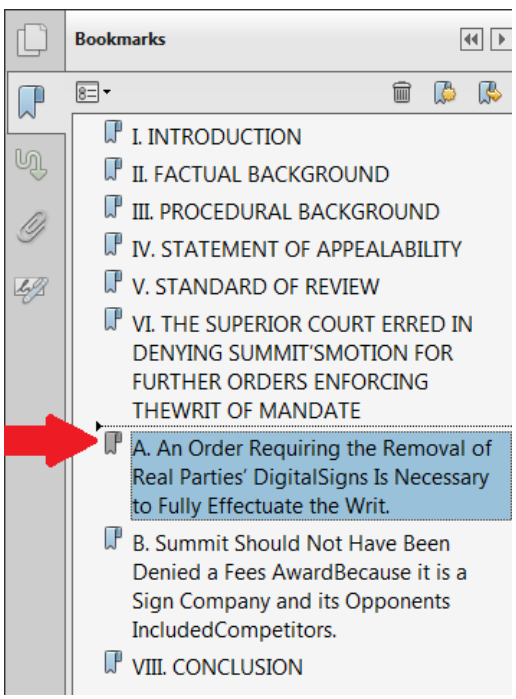
Step 2: Left click and hold while you drag the bookmark to the new location. Release the left mouse button to drop the bookmark to its new location.

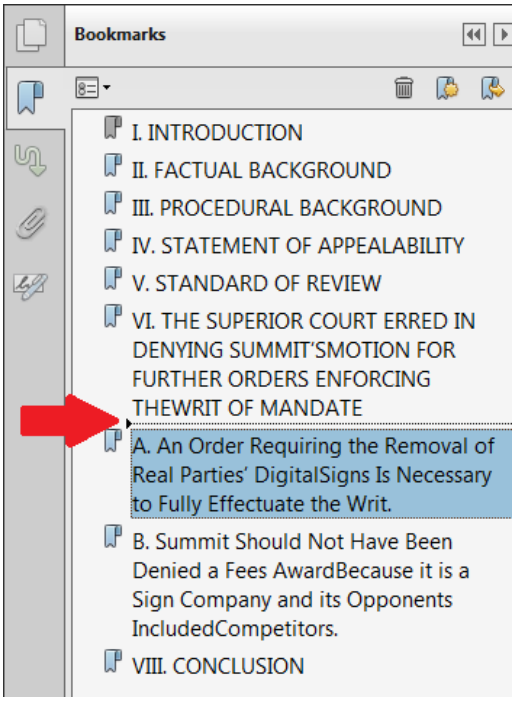
Nesting bookmarks

Bookmarks can also be nested underneath other bookmarks to create a tiered structure of bookmarks, as in the illustration. Notice that the Argument and Authorities bookmark has three nested bookmarks underneath. These bookmarks link to different argument headings in that section of the brief. Clicking on the minus sign next to the Argument and Authorities bookmarks collapses these bookmarks so that they are not visible. A plus sign then appears next to the Arguments and Authorities bookmark, which will expand the nested bookmarks and make them visible again when selected.



To nest a bookmark underneath another bookmark, move the bookmark as described above. But this time, move the bookmark up and over underneath the bookmark where you want it nested. In other words, select the bookmark by left clicking and holding the mouse button down. Then move it up and to the right without releasing the mouse button. Release the mouse button once the bookmark appears to be indented. Once you have the bookmarks the way you want them, be sure to save your document in order to save your changes!





3. Redacting

You must redact the following information from your briefs, appendix materials, records in original proceedings and any other electronic documents that you send to the court: (1) **social security numbers**; (2) **a birth date**; (3) **a home address**; (4) **the name of any person who was a minor when the underlying suit was filed**; (5) **a driver's license number**; (6) **a passport number**; (7) **a tax identification number**; (8) **any similar government-issued personal identification number**; (9**) bank account numbers**; (10) **credit card numbers**; and (11) **any other financial account number**.

The best way to avoid having to redact your brief is not to use any of the above information in your brief. This information will seldom be of use to an appellate court.

The most important thing to remember about redacting documents is to **permanently remove the information from the document**. **Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat. And anyone can search the text of the document to find the text that is beneath the highlighter mark.

If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see instructions below). *Please note that Adobe Acrobat Standard does not have redaction features.*

Redacting using Word

If you do not have Adobe Acrobat Pro, then you should edit the text of any document that you have in the original file (e.g., a Word document) to remove the information. Replace any characters that you remove with the letter x and then save the edited document as a new document. Here is an example:

Original text document:

> Mike Brown's social security number is 357-57-7372. His home address
>
> is 1510 Maple Avenue, New York, 201292. His credit card number is
>
> 2138 2912 2938 2919.

Edited Text:

> Mike Brown's social security number is xxxxxxxxxx. His home address is xxxx xxxxx xxxxxxx xxx xxxxx xxxxxxx. His credit card number is xxxx xxxx xxxx xxxx.

As you can see, depending on the font you are using, editing the document in this way may slightly alter the layout of your document. Be sure to check the page layout to see if your page numbering has been altered. If you do not have Adobe Acrobat Pro and you only have the documents in paper format, you will need to copy the documents, redact them manually, and then scan the redacted documents.

Redacting Using Adobe Acrobat Pro

Redaction should be done before creating bookmarks and making the appendices text searchable. The steps below will remove bookmarks and text recognition.

You must redact the following information from an appendix submitted to the court: (1) **social security numbers,** (2) **a birth date,** (3) **a home address,** (4) **the name of any person who was a minor when the underlying suit was filed,** (5) **a driver's license number,** (6) **a passport number,** (7) **a tax identification number,** (8) **any similar government-issued personal identification number,** (9**) bank account numbers,** (10) **credit card numbers,** and (11) **any other financial account number**. (Cal. Rules of Court, rule 1.20.)

The most important thing to remember about redacting documents is to **permanently remove the information from the document**. **Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat. And anyone can search the text of the document to find the text that is beneath the highlighter mark.

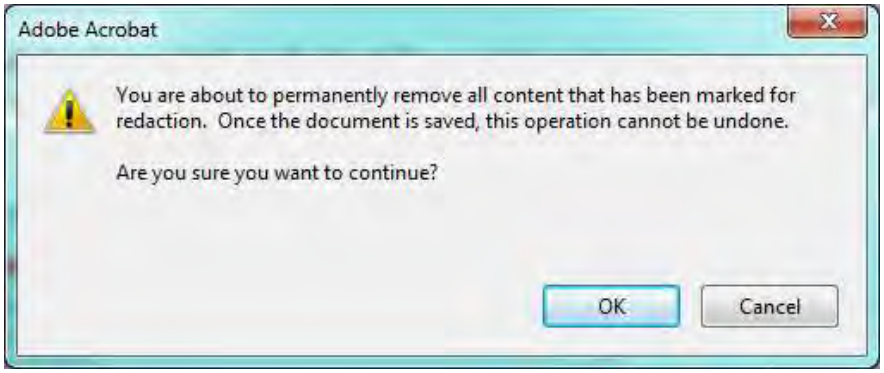
If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see instructions below). ***Adobe Acrobat Standard does not have redaction features.***

Click the **Tools** panel > **Protection** > **Mark for Redaction**.

Select the text you want to redact. To select text, click the left button on the mouse and drag it across the text using the redaction tool. You can also double click a word to mark it for redaction.

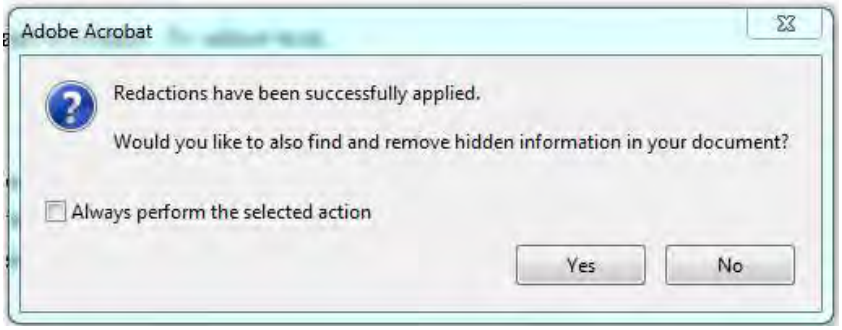
1. Place the cursor over the word marked for redaction to preview what the text will look like when redacted.
2. Once you are satisfied with the appearance, choose **Apply Redactions**.

This window will appear



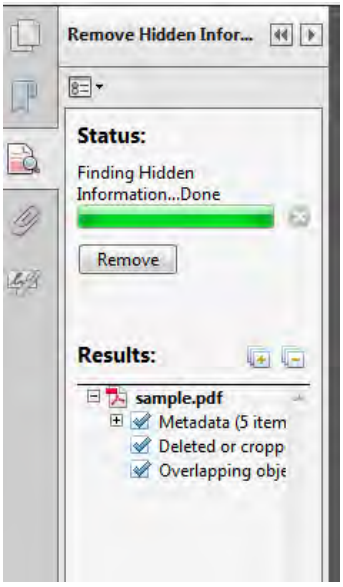
Click **OK**

When this window appears



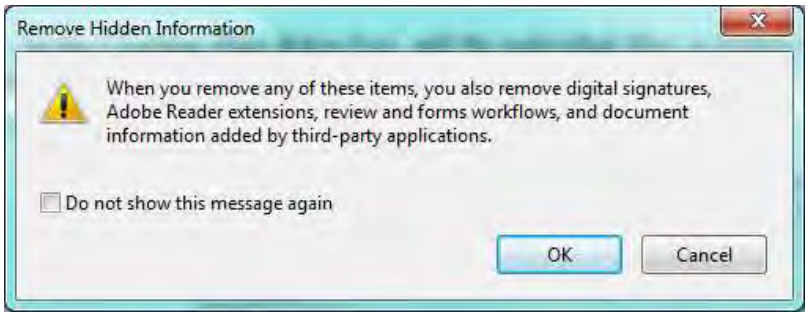
Click **Yes**

Adobe will open the panel below and find hidden information



Click **Remove**

When this window appears

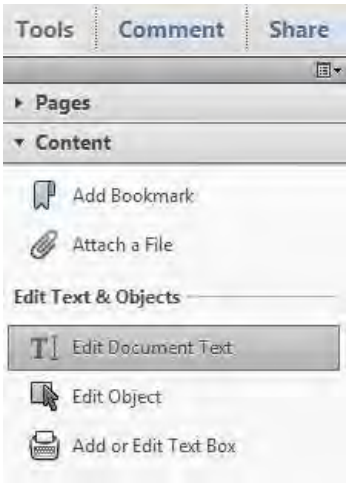


Click **OK**
Then Save the document.

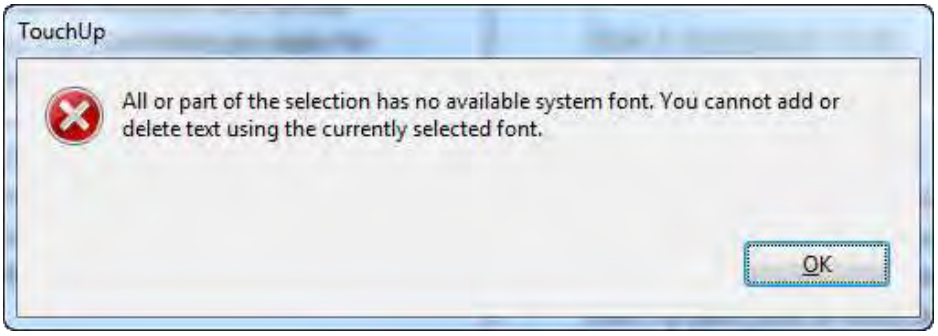
Fixing Mistakes

The Edit Document Text tool

It is not unusual to get to the end of the process of creating an electronic brief and discover that you have made a typographical error. This can be especially frustrating and stressful when you are trying to meet a deadline. Your first inclination might be that you have to fix any mistakes in your brief in Word or WordPerfect and then convert everything to PDF again. But you may be able to fix some simple typographical errors using Adobe Acrobat. The **Edit Document Text** tool allows you to erase and type in a PDF as though it were a word processing document. Adobe Acrobat automatically recognizes the font type and size, and you can backspace to remove text and then retype. To use the tool, select **Tools > Content > Edit Document Text**. Then place your cursor where you want to edit and type as you would with a word processor.



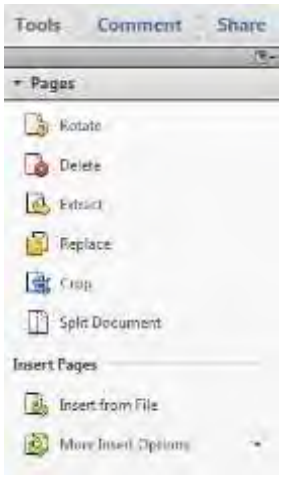
The tool has some serious limitations. First, not all fonts are available in Adobe Acrobat. If you used an unusual font you may get the following message:



The **Edit Document Text** tool also cannot reflow all of the text in your document like a word processor, so you may be able to fix a simple typographical error, but you cannot use the tool to retype sizeable portions of your brief.

Replacing Pages

If the mistake cannot be fixed with the **Edit Document Text** tool, you may be able to fix the error by deleting the offending page and replacing it with a corrected page. To replace a page, first fix the mistake in your word processing program. Then convert the corrected word processing document to PDF. Now **Extract** the corrected page from your corrected PDF and save it as a separate PDF document. Then **Delete** the page with the error from your original PDF. Now **Insert** the corrected page into the proper place in the original PDF.



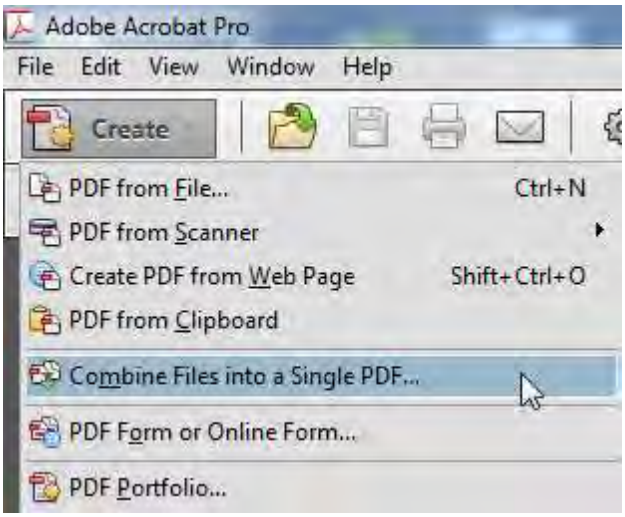
Depending on the mistake, it may just be easier to start over and recombine all your files after fixing the error in your brief. But if you have done a lot of manual bookmarking and hyperlinking, replacing the page using Adobe Acrobat may be easier than starting all over again.

Combine individual files into one PDF file.

If your document consists of several files, e.g., the brief, attachments, and a proof of service, the rules require that you combine them into a single PDF file before filing. You must have Adobe Acrobat or a similar PDF program to accomplish this task. Recent versions of Adobe Acrobat may vary slightly, but the process is similar. To combine individual files into a single PDF document, follow these steps:

Within a document in Adobe Acrobat

Choose **Create > Combine Files in to a Single PDF**



Or

From the Main Menu in Adobe Acrobat

Choose **Combine Files into PDF**

In the dialog box, add the individual files or folders that you want to combine into a single PDF. The files can be of any format supported by Adobe Acrobat (Word, PDF, Excel, etc.).

Arrange the files in the order that you want to combine them.
Select **Combine Files**.
Save and name the combined document

II. Creating Electronic Appellate Appendix

Appendices must comply with California Rules of Court, rule 8.124, including chronological and alphabetical indices. When possible, use PDF files that are converted from native formats, rather than scanned documents. (See Saving/Converting directly to PDF.) Counsel or parties should cooperate in providing electronic copies of documents when requested and should check the local rules of the court where they will be filing to make sure all requirements for electronic documents have been met. (See also Appendix A - Step-by-Step Digital Appendix Guide and Appendix B - Courts of Appeal Digital Appendix Requirements.)

1. Chronological Index

The chronological and alphabetical index should be converted from the wordprocessing program used to create them.

2. Pagination

Make sure to number the pages consecutively *beginning with the cover page of the document*, using only the Arabic numbering system, as in 1, 2, 3. Every page must have a number. Do *not* use a separate pagination system for chronological or alphabetical index within the document. The page number does not need to appear on the cover page.

3. Scanning Documents

Although you are prohibited from scanning your documents that are available in electronic format (e.g. cases, statutes, etc.), there are occasions where you will need to scan a document in order to include it in your appendix. For example, a trial court may not have electronic filing so you may have to scan a trial court order. Or maybe you really want to include a contract in your appendix and it is only available in paper form. In those situations the only solution is to scan the document.

You can create a PDF file directly from your scanner using Adobe Acrobat or other software. When scanning, make sure that the scanner settings are:

- 300 dots per inch (dpi)
- Black and white (not gray scale or color, unless scanning an image)
- OCR (optical character recognition)

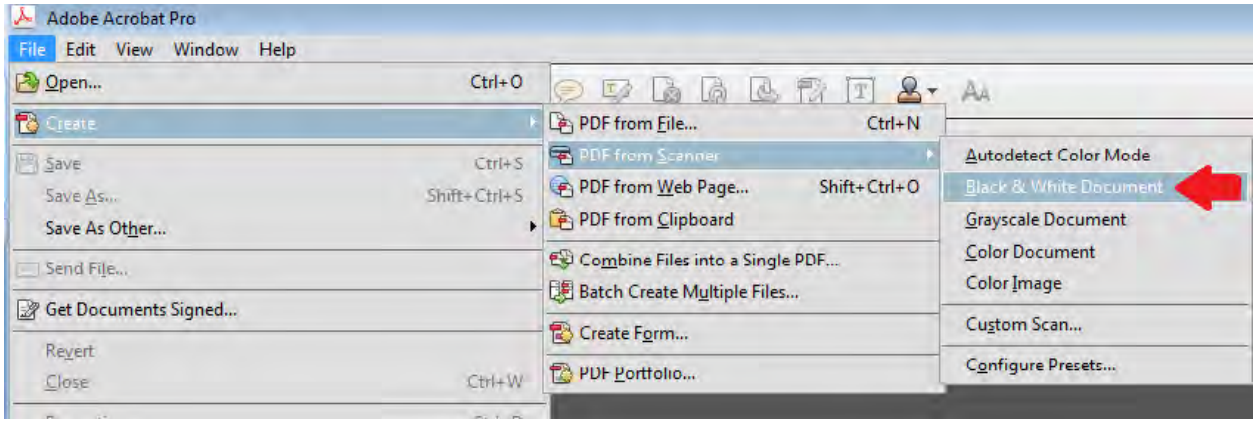
A one hundred page scanned document (that does not include images) with these settings should be about 3.5 megabytes in size. (NOTE: File size may vary with certain documents.) If scanning is creating files that are too large, check the settings on your scanner. Most office copiers, have a menu that allows the scanner settings to be adjusted.

If you have already adjusted the scanner settings, and the file size is still too large, some computer programs have the capability to reduce the file size. Adobe Acrobat Pro can do that (see instructions below). Make sure to do this before bookmarking the appendix. There are also a number of online resources that explain how to reduce the file size of scanned documents.

Scanning with Adobe Acrobat

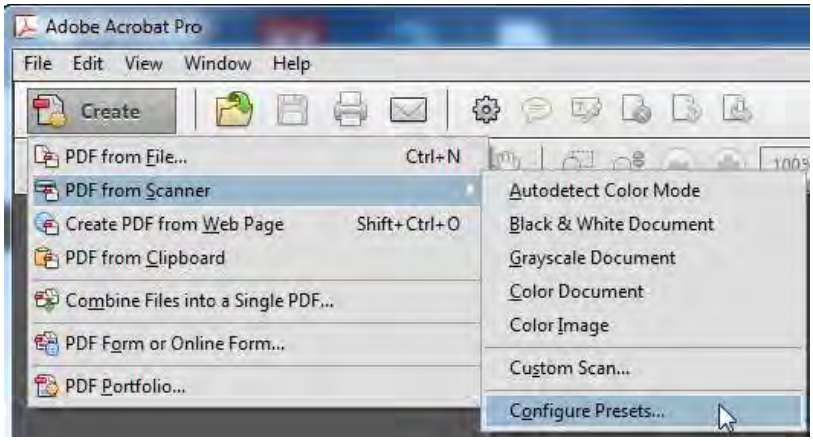
If you have a scanner connected to your computer that Adobe Acrobat recognizes, you can scan documents using Adobe Acrobat. Follow these steps:

1. Insert the document into your scanner
2. Open Adobe Acrobat
3. In Acrobat, choose **Create> PDF From Scanner**
4. Choose Black and White

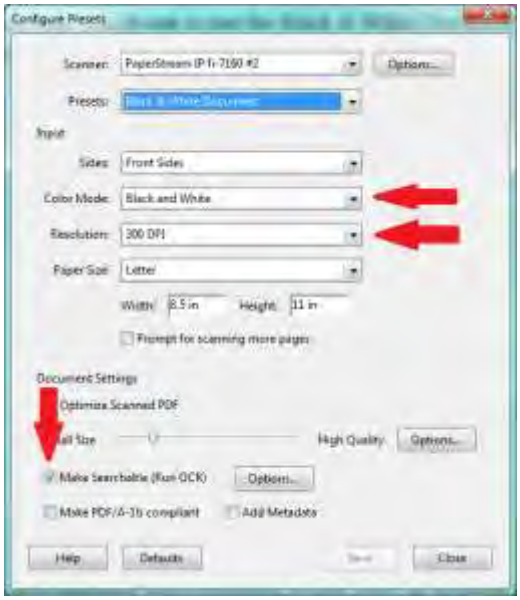


Preset scanning settings for Adobe Acrobat

Adobe allows you to preset settings for scanning a document. To configure these settings choose **Create> PDF from Scanner> Configure Presets**.

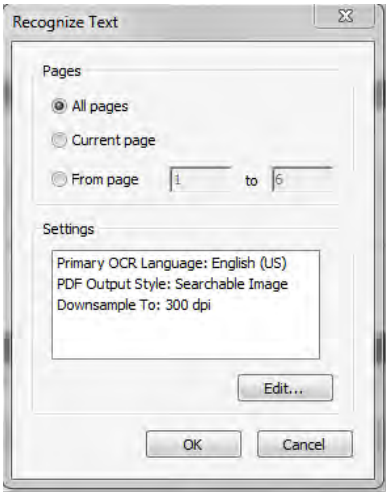


Configure your presets to scan at 300 dpi. Be sure to check **Make Searchable (Run OCR)**. For standard black and white documents you do not need to move the slider to create a high quality scan—smaller file size is preferred. Save your settings before scanning. The default settings are now set and each time you choose to use the Black & White Document preset the document will be scanned using these settings.

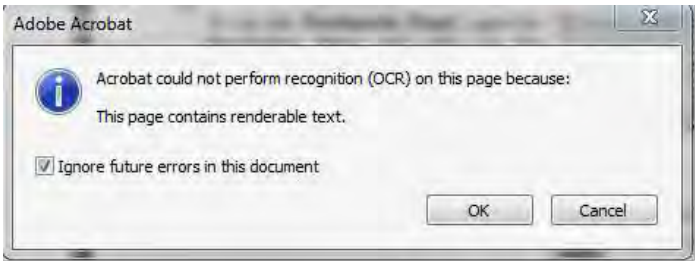


4. Make a document searchable from any scanned or otherwise non-searchable material searchable by using Recognize Text

Open the document in Adobe Acrobat Pro.
Click **Tools >Recognize Text> In This File > OK**



If some text has already been rendered searchable, check the box Ignore future errors in document and click on OK. When the OCR process is complete, remember to save the text searchable version of the document.



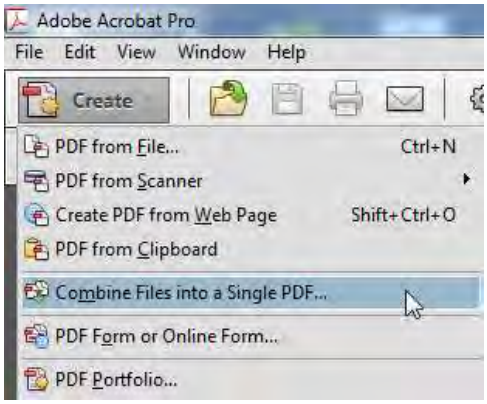
NOTE: If a header, e-filing stamp or bates no. has been added to a non-searchable document, Acrobat will not OCR that page.

5. Combine individual files into one PDF file.

An appendix typically consists of many separate documents, e.g., the complaint, minute orders and a proof of service. These documents must be combined into a single PDF file before filing. You must have Adobe Acrobat or a similar PDF program to accomplish this task. Recent versions of Adobe Acrobat may vary slightly, but the process is similar. To combine individual files into a single PDF document, follow these steps:

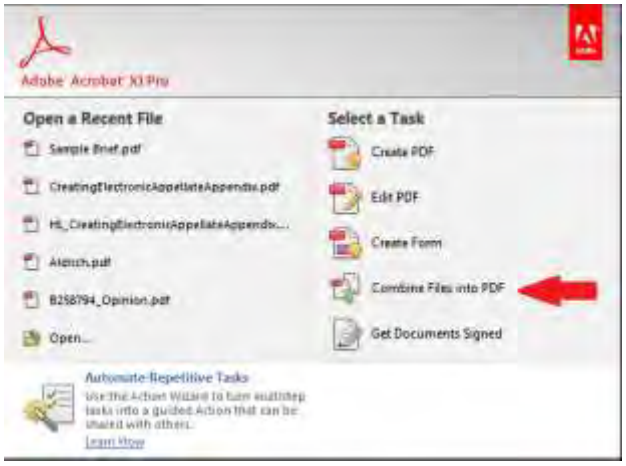
Within a document in Adobe Acrobat

Click **Create > Combine Files in to a Single PDF**



OR

From the Getting Started Menu in Adobe Acrobat



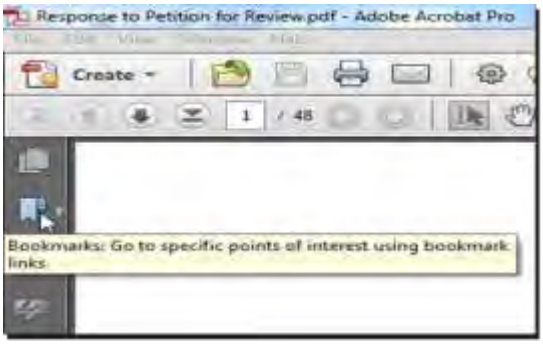
In the Combine Files dialog box, add the individual files or folders that you want to combine into a single PDF. The files can be any format supported by Adobe Acrobat (Word, PDF, Excel, etc.).

Arrange the files in the order that you want to combine them.
Click **Combine Files**.
Name and save the combined document.

6. Create bookmarks for all documents contained in the appendix.

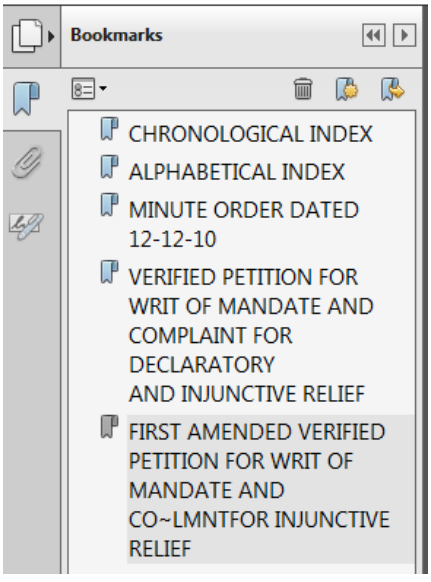
A bookmark is a text link that appears in the Bookmarks Panel of Adobe Acrobat. Some rules require bookmarks for each document that is listed in the index. Be sure to check the local rules of the court you are filing with to make sure you have met all requirements for electronic appendices. For documents without titles, be sure to use descriptive labels for your bookmarks.

To see the Bookmarks Panel, click on the Bookmarks Icon in the Navigation Panel.



Automatically generating bookmarks using Adobe Acrobat

Adobe Acrobat automatically creates bookmarks for each combined file when you use the **Combine Documents** feature discussed above in Step 3. The bookmarks will have the names of the files that you merged. However, some document titles listed in the index can be longer than what the filename should be. Using the **Combine** feature will require renaming the bookmarks.



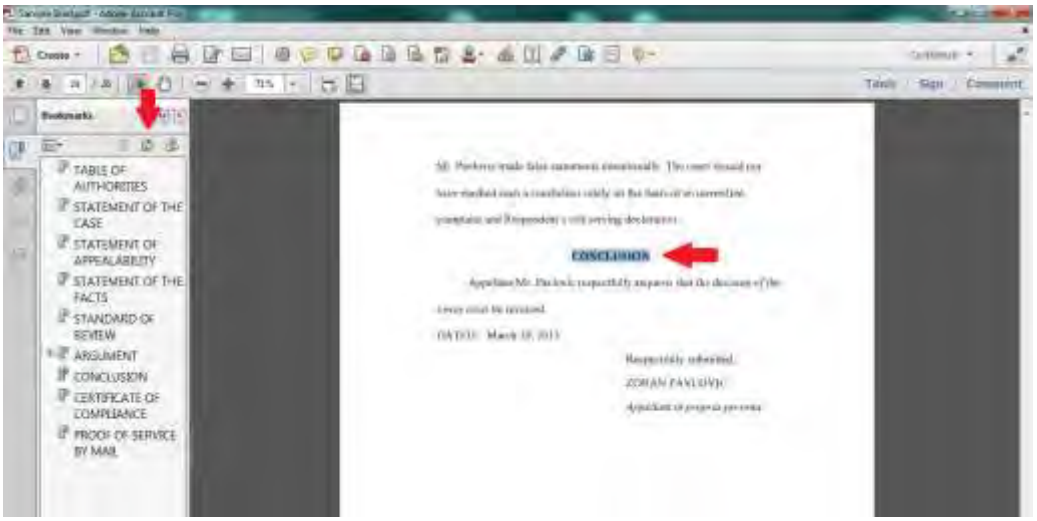
Manually adding bookmarks

You can manually add and edit the bookmarks. To add a bookmark, follow these steps:

1. Click on the page where you want to create a bookmark
2. Click the **New Bookmark** Icon in the Bookmarks Panel or select **CTRL** and **B** keys on your keyboard at the same time.
3. In the text of the new bookmark, type the name or label that you want to give the bookmark.

OR

Highlight the text on the page you want to bookmark, then press the **CTRL** and **B** keys on your keyboard at the same time (or right click and select add bookmark). The bookmark will appear in the panel and the name will be the same as the text you highlighted.



The bookmark name will be the same as the text you highlighted.

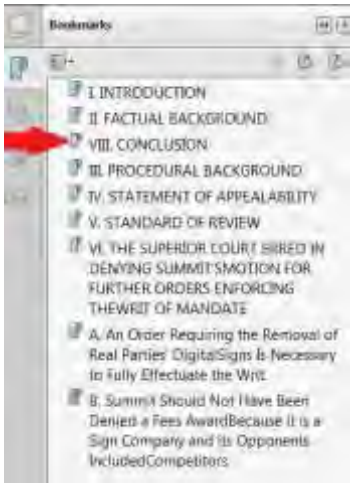
Bookmarks should use the same names that are listed in the index

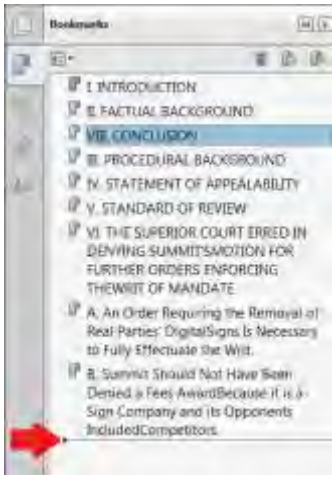
Editing bookmarks

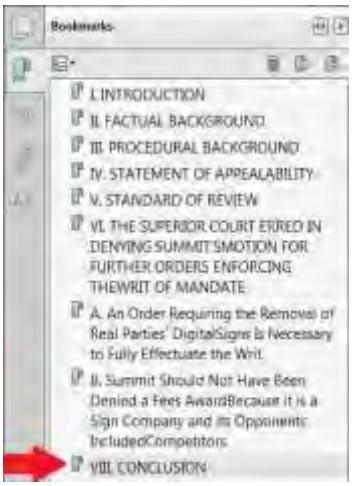
If you want to delete a bookmark, select the bookmark and press the delete key. To edit the bookmark name, double click on the bookmark to highlight the name, enter the new name and press Enter.

Moving bookmarks

To move bookmarks up and down in the Bookmarks Panel, click and drag the bookmark icon to the desired location and release the mouse button.

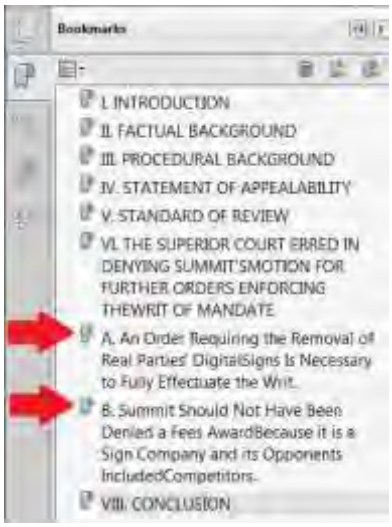




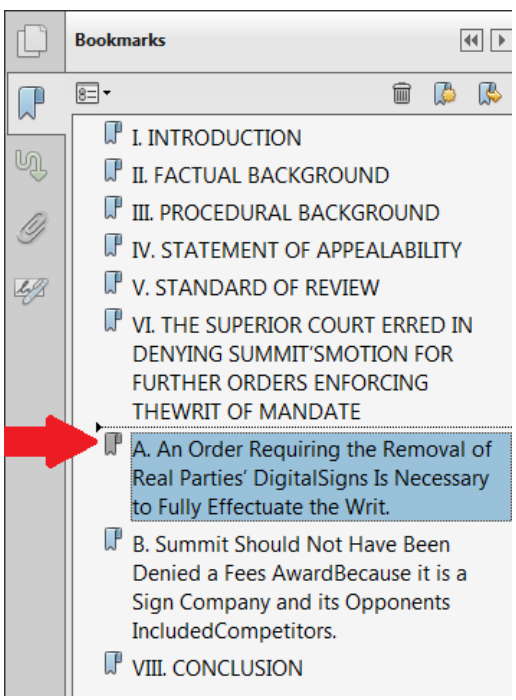


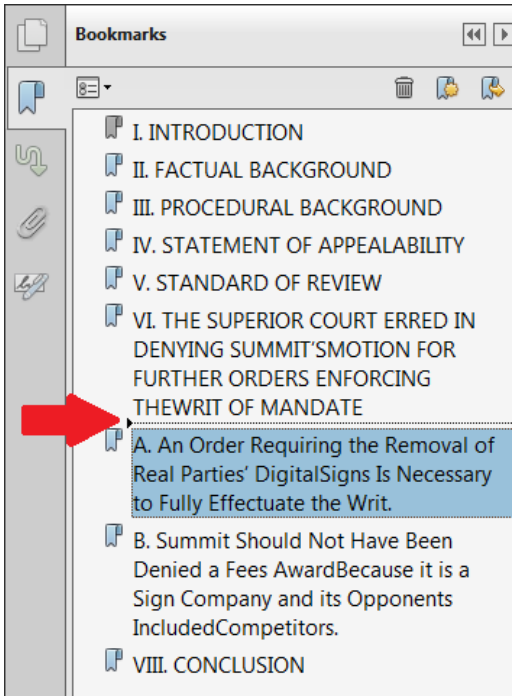
Nesting bookmarks

Bookmarks can be nested under other bookmarks to create a hierarchical, tiered structure.
In the example below, A and B are subheadings under Argument VI.

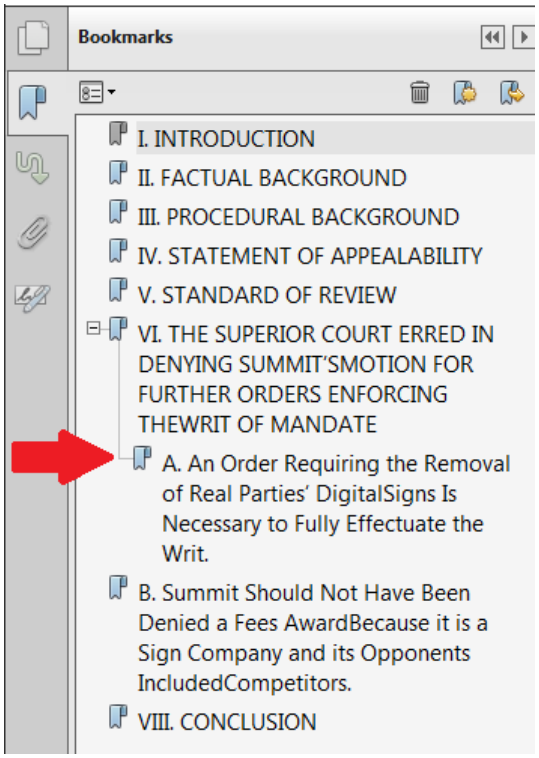


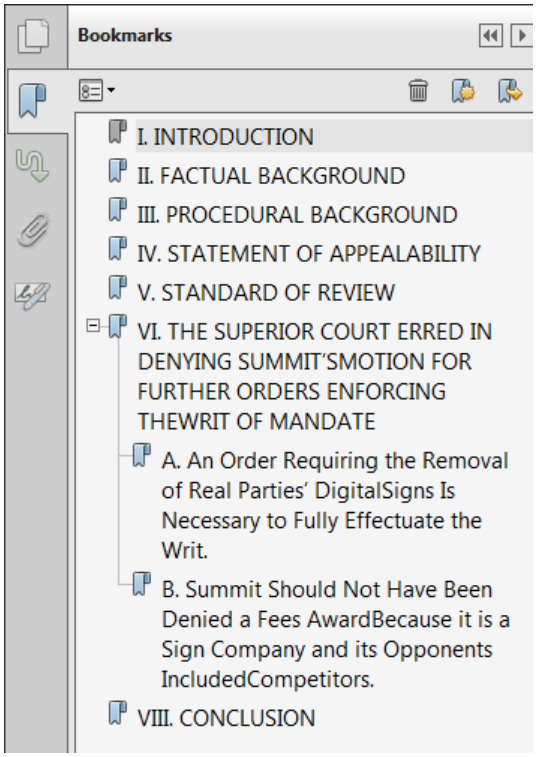
To nest a bookmark, click and hold on the bookmark icon. Move the icon to the desired location and to the right until the black line shortens, then release the mouse button.





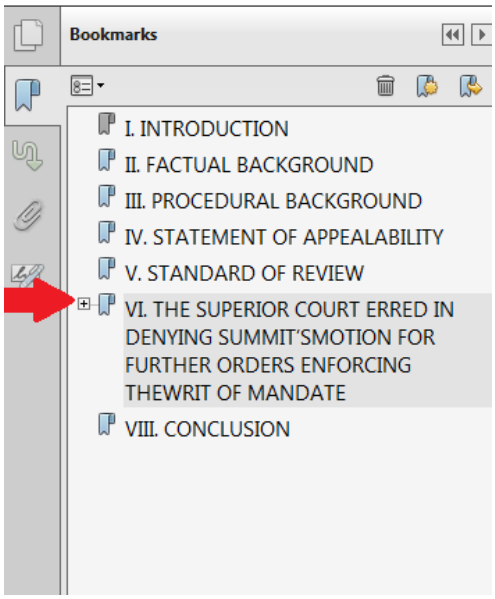
Release the button to nest the bookmark. Repeat for subheading B.





Alternatively, the mouse, the Shift and Control keys can be used simultaneously to mark two or more bookmarks to be nested, which can then be moved as a group to a new location.

Close and open the primary bookmark by clicking on this icon.



7. Redacting

Redaction should be done before creating bookmarks and making the appendices text searchable. The steps below will remove bookmarks and text recognition.

You must redact the following information from an appendix submitted to the court: (1) **social security numbers,** (2) **a birth date,** (3) **a home address,** (4) **the name of any person who was a minor when the underlying suit was filed,** (5) **a driver's license number,** (6) **a passport number,** (7) **a tax identification number,** (8) **any similar government-issued personal identification number,** (9**) bank account numbers,** (10) **credit card numbers,** and (11) **any other financial account number**. (Cal. Rules of Court, rule 1.20.)

The most important thing to remember about redacting documents is to **permanently remove the information from the document**. **Do not use a black highlighter in Adobe Acrobat to cover up the information!** Highlighter marks can be removed by anyone with Adobe Acrobat. And anyone can search the text of the document to find the text that is beneath the highlighter mark.

If you have Adobe Acrobat Pro, you can use the redaction features of the program to redact documents electronically (see instructions below). ***Adobe Acrobat Standard does not have redaction features.***

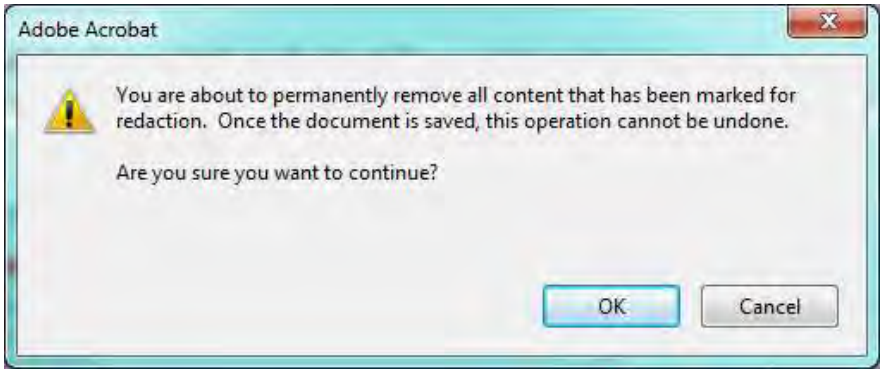
Redacting Using Adobe Acrobat Pro

Click the **Tools** panel > **Protection** > **Mark for Redaction**.

Select the text you want to redact. To select text, click the left button on the mouse and drag it across the text using the redaction tool. You can also double click a word to mark it for redaction.

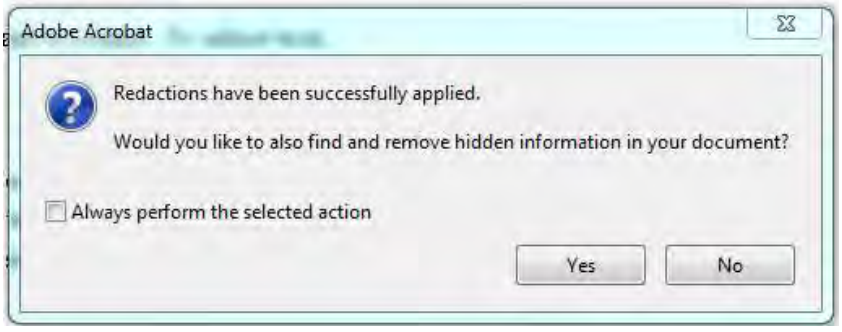
Place the cursor over the word marked for redaction to preview what the text will look like when redacted.
Once you are satisfied with the appearance, choose **Apply Redactions**.

This window will appear



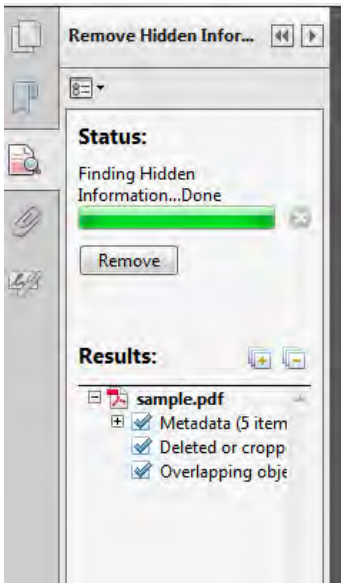
Click **OK**

When this window appears



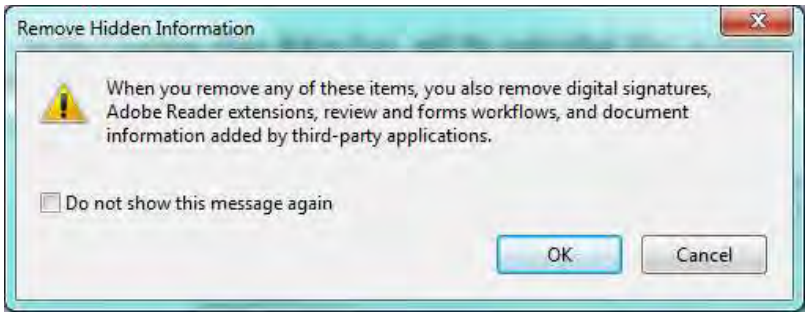
Click **Yes**

Adobe will open the panel below and find hidden information



Click **Remove**

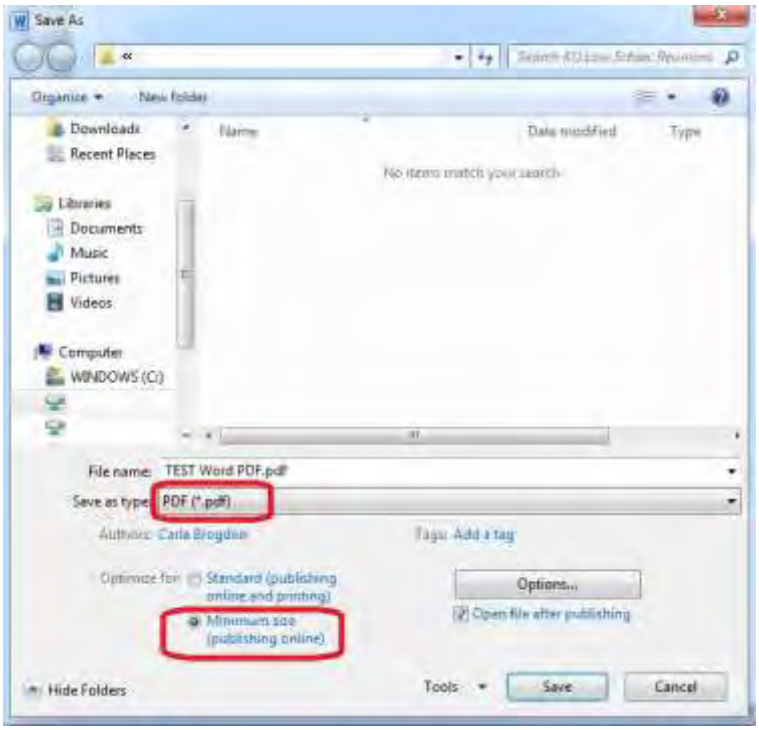
When this window appears



Click **OK**
Then Save the document.

Optimize PDFs to reduce file size

Large documents or documents containing forms, photos or graphics should be saved as an optimized PDF to reduce file storage size. Select **File** and Click **Save As**. From the **Save as type** dropdown menu, select **PDF**. From the **Optimize for** radio buttons, select **Minimum size (publishing online)**. Click Save.



III. Hyperlinking

Overview of Hyperlinking

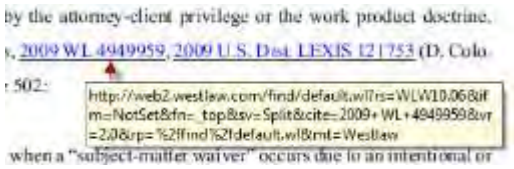
In the internet research world, hyperlinks are a standard way of "drilling down" for more detail or specific information. Just as all web pages contain links to other pages, cases downloaded from legal research services such as Westlaw or Lexis contain links to the cases, statutes, articles, or other sources cited within the opinion. The links allow immediate access by the reader to these referenced materials.

Attorneys can include links to cited law and their Appendix or Clerk's Transcript and Reporter's transcript, adding another level of persuasion to their writing. Hyperlinks in briefs and other court filings provide quick, easy, and pinpoint access to particular sections of a case, or to specific filings in the court's record. The attorney can thereby highlight the precise issue presented, and the specific evidence and controlling or persuasive law the court should consider.

Though it is not required, rather preferred, hyperlinks in court filings are very beneficial for court chambers. Court submissions which include links to relevant case law and case filings are easy for chambers staff to review. The attorneys' arguments can be immediately verified in the context of the relevant law. The justice or judicial clerk is able to read the text of the cited case law on one screen while reading the attorney's brief on the other. And if a brief contains links to referenced exhibits, and even to specific pages within those exhibits, the judge or judicial clerk can access the relevant evidence without having to navigate through the paper record. Particularly when dealing with large and complex cases, links save chambers considerable time and effort. Links make it easy for the court to verify – and adopt – the positions taken by an advocate.

Types of Permissible Hyperlinks

Subject to the court's local rules, the following types of hyperlinks are typically allowed in court documents.

Internal Links	For example, the Table of Contents located at the beginning of this Guide.
Links to attachments and exhibits being filed with your brief	**Note**: Evidence ***must*** be filed of record. A hyperlink to a public website where evidence can be found is not a substitute for filing evidence in support of a motion.
Links to case and statute citations **Note:** Unless a cited case cannot reasonably be found from a public source, it is not necessary to attach copies of cases or statutes to your brief.	For example: **Westlaw**,  by the attorney-client privilege or the work product doctrine. 2009 WL 4949959, 2009 U.S. Dist. LEXIS 121753 (D. Colo. 502: http://web2.westlaw.com/find/default.wl?rs=WLW10.06&if m=NotSet&fn=_top&sv=Split&cite=2009+WL+4949959&vr =2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw when a "subject-matter waiver" occurs due to an intentional or **Lexis**,  by the attorney-client privilege or the work product doctrine. 2009 WL 4949959, 2009 U.S. Dist. LEXIS 121753 (D. Colo. 502: when a "subject-matt **or court websites**.  A party has been fraudulently joined if there is no reasonable basis for predicting that the state law involved. Bradley Timberlar http://www.ca8.uscourts.gov/opndir/13/04/121092p.pdf Click to follow link based upon the facts Lumber Co., No. 12-1892 (8th Cir. April 8, 2013).

Creating a Hyperlinked Table of Contents

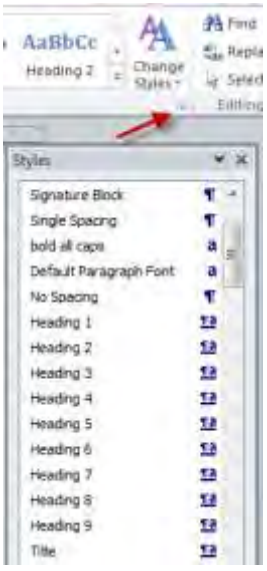
A table of contents in a Word document can include internal hyperlinks for navigating the document. When the document is converted to PDF format, these links will become bookmarks in the PDF document. Note that the Table of Contents is different from the Bookmarks that are required in the PDF version.

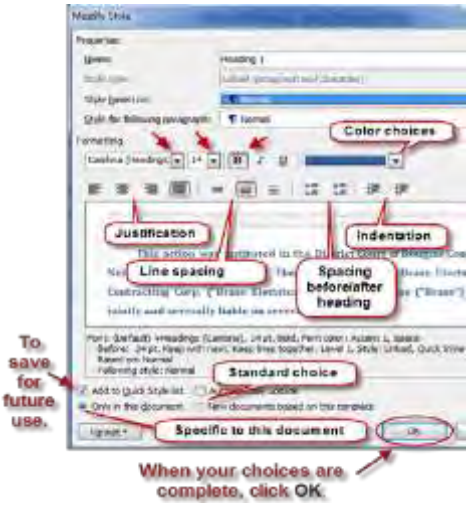
Although there are several methods for creating a table of contents in Word, the one most useful to attorneys (and discussed below), is to create the document, include any headings as you write, and then:

- Mark and format the headings to be included in the table of contents;
- Generate and insert the table of contents; and
- Edit as needed.

Marking and Formatting Table of Contents Entries

To mark and format entries to be included in the table of contents using Microsoft Word:

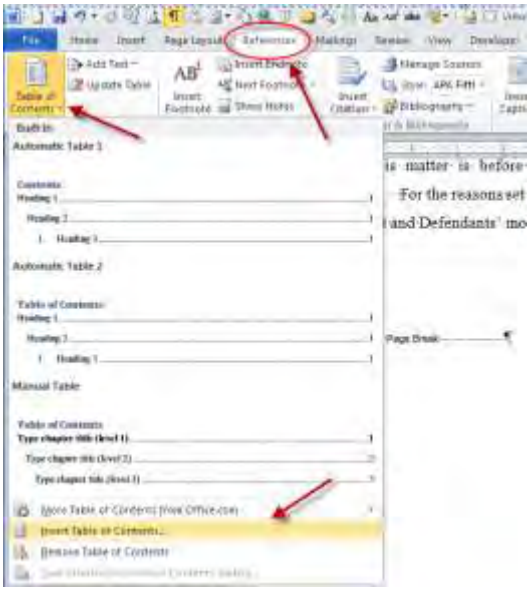
STEP	ACTION
1	Create your document, inserting all headings with the format of your choice.
2	Using your cursor, scroll over and select the heading you want to include in the table of contents. 
3	From the **Styles** section on your **Home** tab,  Click the down arrow in the right lower corner.  A drop down list will appear.  **Note:** There are pre-formatted Heading Styles available in MS Word, but only 2 may be visible in your styles drop-down menu. Additional heading options will appear, as you make your selections. For example, when you select and apply Heading 2, the Heading 3 option will appear and be available for the next heading level, and so on.

If…	Then…
You want the text of the table of contents entries to **match the headings already created** within your document (e.g. font, font color, bold, etc.):	Use your cursor to select the heading to be included in the table of contents.  From the Styles list**, Right-click** the heading level you wish to apply. In the box that appears, select: **Update Heading [x] to Match Selection.** Continue until a heading style has been applied to all heading levels within your brief.
You want to: **Set a standard format** (e.g. font, font color, bold, etc.), for all headings and table of contents entries created with your Word program, Or **Change the heading format** in the brief already created:	From the Styles list, **Right-Click** the heading level you wish to modify. In the box that appears, select **Modify** to open the Modify Style box.  Choose text: • font • font size • appearance • color • justification • line spacing  Save settings for: • **only in this document**, or • all documents created using your standard **templat** • **Add to Quick Style List.** Click **OK.**

Scroll through your document. For each heading, select the heading text with the cursor, then click the heading style to be applied.

Generating and Inserting the Table of Contents

To add the Table of Contents to your document:

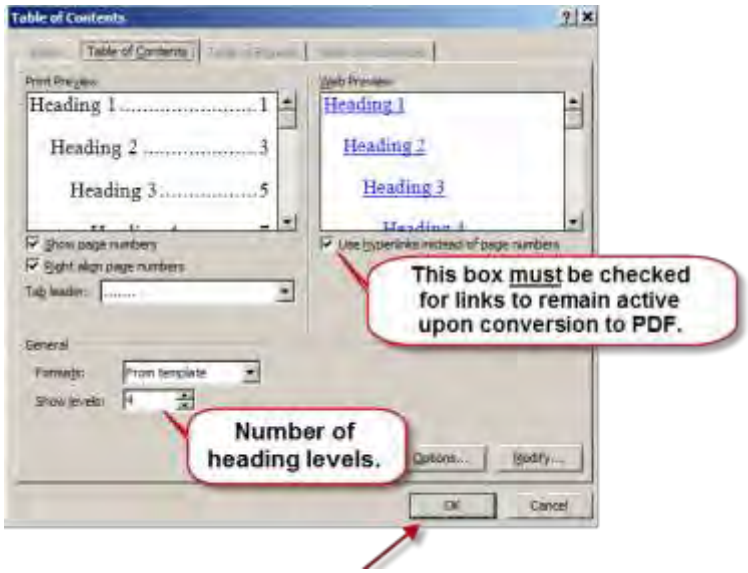
STEP	ACTION
Place your cursor in the document at the location you want to insert the table of contents. Add a title for the **Table of Contents**. Enter a few hard returns. **Control** + **Enter** to insert a page break.	→ vs.¶ ¶ BRASE·ELECTRICAL·CONTRACTING·CORPORATION,·A·Nebraska·Corporation;·and·STEVEN·H.·BRASE,¶ ¶ Defendants.¤ ¶ **MEMOR** → This·matter·is·before·the·court·on·the·parties'·c judgment.···For·the·reasons·set·forth·below,·Plaintiff's·motior be·denied·and·Defendants'·motion·for·summary·judgment·w ¶ **Table·of·Contents¶** ¶ ¶ Page Break¶
Place your cursor where the table of contents entries should begin.	be·denied·and·Defendants'·motion·for·summary·judgment·will·be·granted.¶ ¶ **Table·of·Contents¶** ¶ Page Break¶
From the **References** tab of your Word ribbon, Select **Table of Contents**, and from the menu that appears, Select: **Insert Table of Contents**.	

Make selections for the appearance of the table of contents.

Click **OK**.

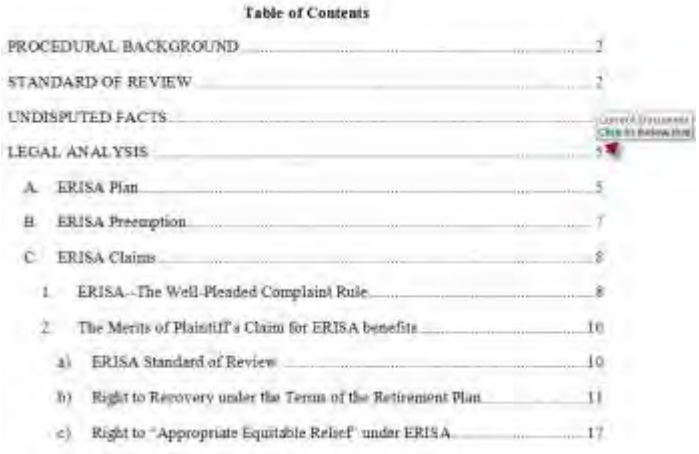
Note: If your table has more than three levels, you must set **Show levels** to the correct number.

Note: The "Use hyperlinks instead of page numbers" must be checked or the table of contents will not have active links upon conversion to PDF.



The Table of Contents, with active section links, will be inserted into your document.

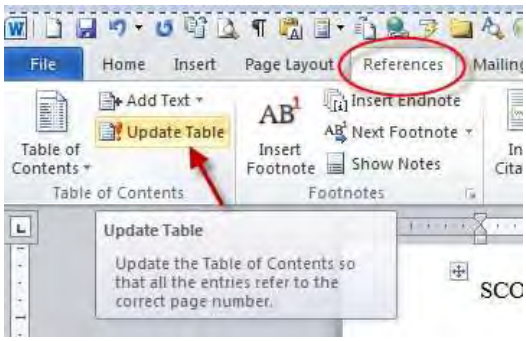
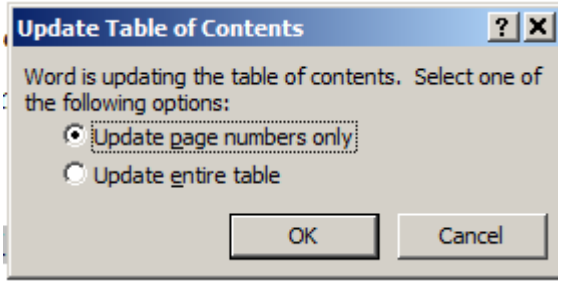
Note: You can manually modify the page numbers to appear as other links in your document,
blue and underlined).



Editing the Table of Contents (if needed)

Inserting the Table of Contents may result in page break changes. For example, hard page breaks or extra lines that were added during drafting to adjust the overall look of the document may no longer be needed, or some may now need to be added.

If the brief was modified after the table of contents was inserted:

STEP	ACTION
From the reference tab on the Word ribbon, select **Update Table**.	
Select **Update page numbers only**. Click **OK**. **Note**: If you have added or changed a heading, choose **Update entire table**.	

When the entire document is complete, using MS Word, **Save** the document as a PDF or **Create PDF**.

Note: Do *not* Print to PDF. All active links in your Word document become inactive in PDFs created using Print to PDF.

Formatting the Appearance of the Links Inserted

Before inserting links into a document, you may choose how those links will appear in the final document. For example, do you want them to appear:

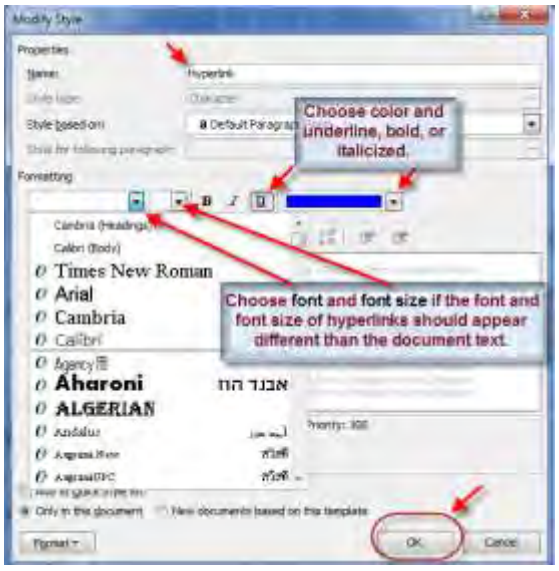
blue and underlined, **bold**

and black, *black and*

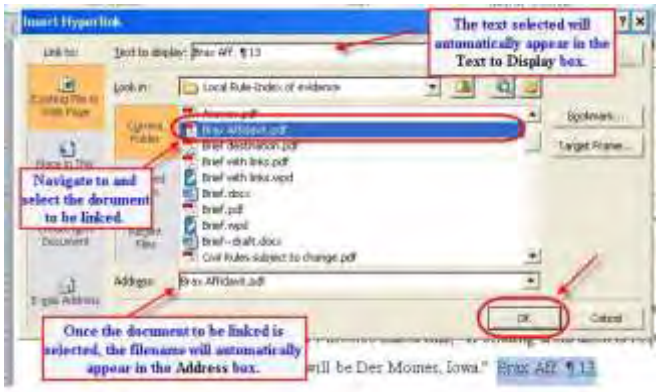
italicized, or

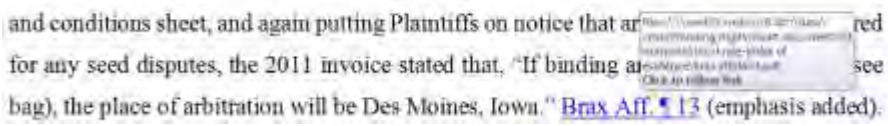
some other appearance?

To select the appearance of the links in your document:

STEP	ACTION
1	On the **Home** tab, click on the tiny arrow under **Changes Styles**. 
2	A drop down menu will appear. Scroll down until you see **Hyperlink**. Right-click on **Hyperlink,** and from the choices that appear, select **Modify**. 
3	A **Modify Style** box will appear. Change the color, font, and underlining, etc. for hyperlinks. **Note:** Choose a specific font and font size for the linked text *only* if the linked text font and font size should appear different from that of the document text. Otherwise, leave the font and font size selections blank. Click **OK**. 

Adding Links to Attachments

STEP	ACTION
1	Save all the attachment documents you will cite in your brief into a single folder in your computer. The documents must be in PDF format. Be sure the names of the files do not contain special characters, such as apostrophes or ampersands, as these will break the hyperlinking process.
2	While drafting your brief, include the citations to the documents saved in your computer.
3	Using your cursor, select the text to which a link will be added. for any seed disputes, the 2011 invoice stated that, "If binding arbitration is required (see bag), the place of arbitration will be Des Moines, Iowa." Brax Aff. ¶ 13.
4	On the **Insert** ribbon, select **Hyperlink**. 
5	In the **Insert Hyperlink** dialog box: • Navigate to cited file saved on your computer; • **Select** the file; and • Click **OK**. 

6	A link to the file will be added to the text. If you hover over the link with your cursor, you will see the link address.  Add links to all the citations in your brief accordingly. **Note:** Specific page links can be added by following the directions in the previous section. Use the **PDF** page number, not a Bates number or footer page number, for the citation.

Automated Links to Legal Citations

Links to legal citations can be added manually or, assuming the software is compatible with your computer and word processing software, by using automated linking software available through Westlaw or Lexis.

Access to Linking Software

Tool	Cost	URL
Westlaw InsertLinks	Must purchase a West BriefTools subscription. Estimated cost: $100/month for small firms; $300 to 500/month for larger firms (10 licenses)	http://legalsolutions.thomsonreuters.com/law-products/solutions/brief-tools?searchterms=brief+tool
Lexis for Microsoft Office	This Lexis software product will add links for research and drafting purposes, but those links are lost upon conversion to PDF. Lexis is investigating the issue.	http://www.lexisnexis.com/en-us/products/lexis-for-microsoft-office.page

Linking Software—Compatibility Information

The following graph outlines the compatibility of Shepard's Links 2008, West InsertLinks, and Lexis Links for Microsoft Office for inserting links into MS Word and WordPerfect documents with a Windows XP (SP3) 2GB Memory, Windows Vista (SP2) 4GB Memory, or Windows 7 – 4GB Memory computer.*

	Shepard's Links 2008	Lexis for Microsoft Office	West InsertLinks
MS Word 2010		X**	X***
MS Word 2007		X**	X***
MS Word 2003	X		X***
MS Word 2000	X		
WordPerfect X6**			
WordPerfect X4 – X5			X
WordPerfect X3	X		X
WordPerfect 10 – 12	X		

* The West and Lexis linking software programs cannot be used on Apple computers. Moreover, although Shepard's Links was not designed to operate on Windows Vista and Windows 7 (as reflected in the Lexis literature), it is working on these computer systems.

** Lexis for Microsoft Office is being developed and tested. However, in its current stage of development, any links added by Lexis for Microsoft Office are being stripped out upon conversion to PDF. Lexis is investigating this issue.

*** Westlaw product information states InsertLinks is compatible with both 32- and 64-bit Microsoft Word. However, while it works well with 32-bit Word, InsertLinks is not fully compatible or useful with 64-bit Word.

**** West currently has no linking software compatible with WordPerfect X6. West indicates it may develop and release this product during the summer of 2013.

Westlaw InsertLinks

InsertLinks is a Westlaw computer software program which scans Microsoft Word or Corel WordPerfect[1] documents to locate legal citations, and then automatically inserts hyperlinks to the Westlaw internet address (url) for those citations into the word processing document.

See attached InsertLink example-Word

InsertLink example-WordPerfect

Installing West InsertLinks

InsertLinks is part of the West BriefTools suite, and a BriefTools subscription is required in order to use this software.

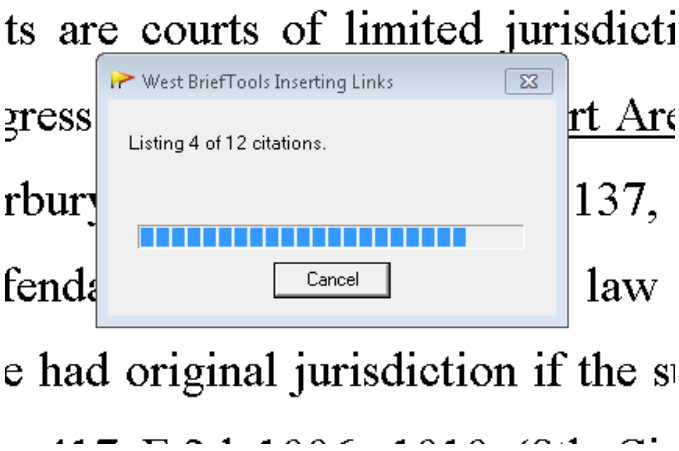
- The current West BriefTools product is Version 2.7.2039, which was updated on December 10, 2012.
- The attached BriefTools Software Download instructions outline the system requirements and provides instructions on how to install West BriefTools.

Using West InsertLinks

Once InsertLinks software is installed, Westlaw links can be installed automatically in Microsoft Word documents using the following steps:

STEP	ACTION
1	With the Microsoft Word document to which you are adding links open on your screen:  Select the **Westlaw Solutions** tab on the Word ribbon.
2	The West BriefTools options will open.  Select **InsertLinks**.

[1] Currently, InsertLinks is not compatible with, and cannot be used for, automatically inserting links into WordPerfect X6 documents. It does, however, work with prior versions of WordPerfect.

STEP	ACTION
3	The InsertLinks software will begin searching the document for citations and inserting the appropriate links.  The box depicted above will disappear when the process is complete and all links are installed.

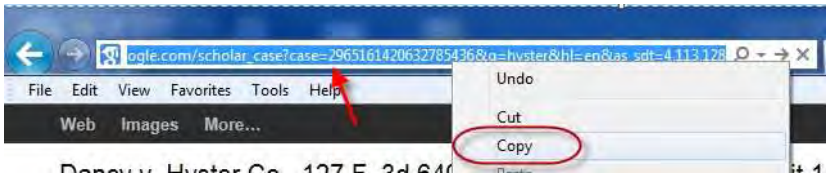
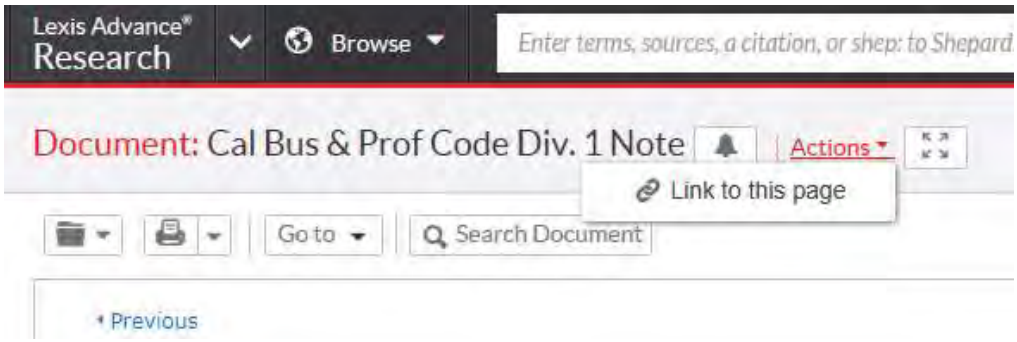
Manually Inserting Hyperlinks

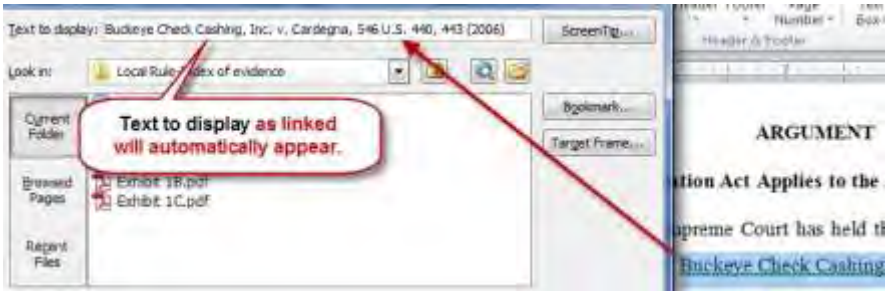
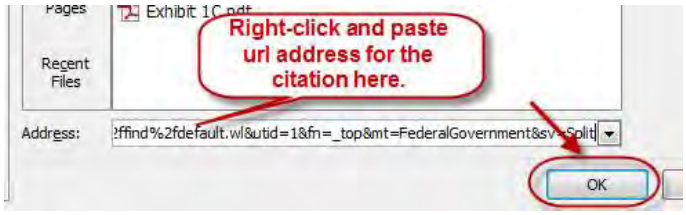
As previously described, hyperlinks to documents filed can be manually added to a document about to be filed. It is also possible to manually create links to documents available through commercial legal websites (e.g., Lexis or Westlaw), and those posted on the court's website (Local Rules).

Manually adding links can be labor intensive if the document is long, but the process is not difficult. And even if you are primarily using software to add links to a document, understanding the underlying mechanics of hyperlinking within WordPerfect and Word documents is helpful and may be necessary if, for example, you need to make corrections to the automatically created links.

Manually Creating Links to Online Research Resources

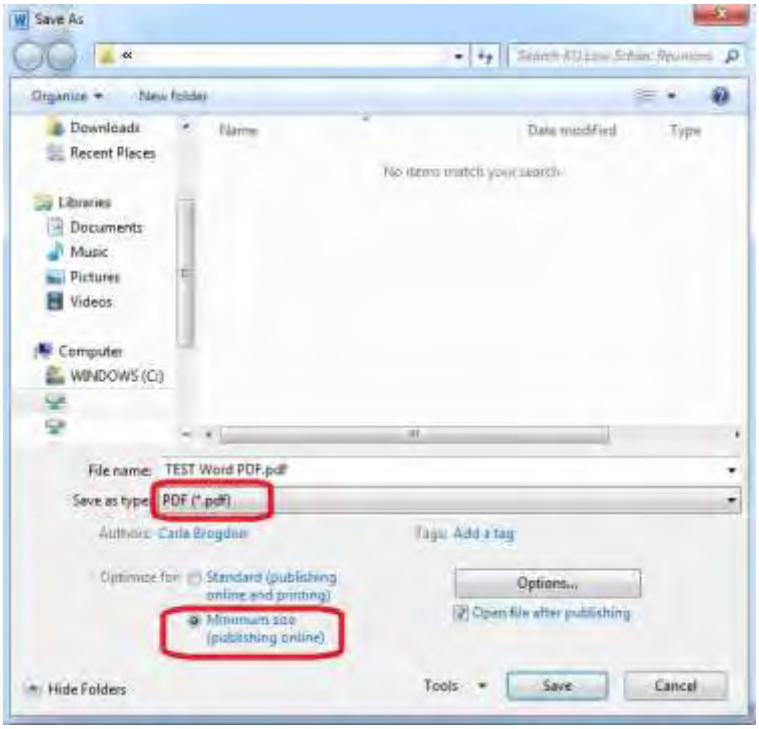
The process for manually adding links to Westlaw, Lexis, Google Scholar, or any other online research resource (LoisLaw, FastCase, etc.,) is the same.

STEP	ACTION
1	In the brief, use your cursor to select the citation to which you are adding a link. The United States Supreme Court has held that the FAA "embodies the national policy favoring arbitration." Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443 (2006). See also Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 56 (1995);
2	Sign into the legal research website and open the cited document. Select the url address for the document. **Note:** When using this method, if the link on the website changes, the link in the document may not work. Right-click, and **Copy** the address. See below:  **OR**  When using Lexis Advance, select Actions > Link to this page. This will use a static link, which should always work.  **Note**: Check your local rules for any authority or limitations on the legal research websites to which links are permitted. **Note:** Some attorneys have reported difficulty using this method to insert links to Lexis research.

STEP		ACTION
3	a	Select the **Insert** ribbon, then select **Hyperlink**. An **Insert Hyperlink** dialog box will appear.  **Note:** The text you selected will automatically appear in the "**Text to display**" line.
	b	Place your cursor in the **Address** box of the Insert Hyperlink dialog box. Right-click. From the drop-down that appears, select **Paste.**  Click **OK**.
	c	The link to the citation will be added in your brief. 

Optimize PDFs to reduce file size

Large documents or documents containing forms, photos or graphics should be saved as an optimized PDF to reduce file storage size. Select **File** and Click **Save As**. From the **Save as type** dropdown menu, select **PDF**. From the **Optimize for** radio buttons, select **Minimum size (publishing online)**. Click Save.



Appendix A

STEP-BY-STEP DIGITAL APPENDIX GUIDE

1.0 Preparing the Trial Exhibits

Trial exhibits are often retained in diverse file formats as well as hardcopy. For e-filing, all must be converted to searchable PDF. Additionally, because of maximum file size limitations for e-filing, scanning and OCR settings become critical.

1.1 Convert native file formats to searchable PDF

1.2 Scan hardcopy to PDF and apply OCR

1.3 Issues with "second-hand" PDF and OCR

1.4 Reduce size of "bloated" files and maintain optimal file sizes

Files are now searchable PDF, appendix-ready and ready for efficient review.

2.0 Assembling the Appendix

2.1 When all exhibits that make up the appendix have been selected, create a Chronological index template with columns for **Tab No., Description, Date, Volume, and Page.** Populate the columns for Tab No., Description and Date.

2.2 Rename exhibit files with Tab No. and description, e.g. "Tab 001 - Summons and Complaint for Damages filed 01-15-2014". (The Tab no. will sort the files in Chronological order; see § 2.4 below about suggested file name format.)

2.3 Move exhibit files into folders (Vol. 01; Vol. 02…) with total file size less than 24MB.

2.3.1 When needed, split large files between two or more volumes. Name the sub-divisions of the file with "(Part 1), (Part 2)…" preceding the description, e.g. "Tab 025 – (Part 1) Declaration of James Smith filed 07-15-2015.pdf"

2.4 Use Acrobat's "Combine files" feature to merge the files in each folder and automatically create bookmarks (from the file names) linked to the beginning of each document or document sub-division.

2.4.1 If any exhibit files have been split between volumes, add an additional entry to the index template in § 2.1 above, with Tab No. and "(Part #)" preceding the description.

2.5 Rename the compiled appendix file in each folder (suggest Vol. 01, Vol. 02…) so the appendices sort correctly during Bates stamping, and move them to a new folder.

Appendix volumes, meeting the 25 MB limit have now been created with bookmarks linked to each exhibit. They lack a cover page and index pages as well as bookmarks to the indices.

3.0 Preparing Interim Alpha and Chron Index Pages

Interim indices are now needed to determine the number of pages to be added to each volume for cover page and index.

3.1 Using the Chron index template from § 2.1 above, create interim Master Chron and Alpha index pages for the first volume and individual Chron index pages for all other volumes. (The 4th COA also requires a "local" Alpha index for each volume) Note that when creating the Alpha indices, you must take into account the "(Part #)" text when sorting by description. <u>All indices must be formatted exactly as the final index pages are formatted, including any heading, case description, etc</u>. Save as PDF.

3.2 Use the Acrobat thumbnail panel to insert the appropriate interim index pages plus a blank cover page at the beginning of each volume.

4.0 Bates Stamping the Volumes

With interim Index pages and blank cover pages added, the volumes are now ready for Bates stamping which, when finished, will provide the page numbers needed to complete the final index pages and cover pages.

4.1 With the appendix volumes in a single folder *with no other PDF files*, Bates stamp them sequentially from the cover page of the first volume through the final page of the last volume.

4.2 Use the bookmarks in each volume to link to the first page of each exhibit and note the Bates number for the index.

5.0 Finalizing the Master Chron, Master Alpha, Individual Chron and Alpha Indices and Volume Cover Pages.

5.1 Using the interim Master Chron index from § 3.1 above, fill in the volume and page number columns and finalize the Master Chron and Alpha index pages for the first volume. Next, create the final individual Chron and Alpha (4th COA) index pages for all other volumes. Save to PDF.

5.2 Create a cover page template and fill in the volume number and page range for each volume. Save to PDF.

6.0 Replacing Temporary Cover and Index Pages in Each Volume

6.1 Use Acrobat's thumbnail panel to replace the temporary cover and index pages in each volume with the final versions. Note that this process removes the Bates numbers on the replaced pages.

6.2 Use Acrobat's Remove Bates Numbering tool to remove all Bates numbers in the folder, and then use the Bates Numbering tool to recreate them in all volumes.

7.0 Additional Requirements

7.1 Create bookmark links to indices in each volume. (Only included in 6th COA rule but should apply to all)

7.2 Sync the number in the page navigation window (Acrobat page counter) with Bates numbers in each volume. (Only included in 5th COA rule but should apply to all)

7.3 Create bookmark links to listed sub-attachments, such as an exhibit to an attachment. (6th COA)

7.4 Set all bookmark zoom settings to "Inherit Zoom" (Only included in 5th COA rule but should apply to all)

Appendix B

Creating Digital Appendices for E-Filing in the CA COA

Five of the six California Appellate Districts have implemented mandatory e-filing and the one remaining, the 2nd, will do so late this year. With the requirement for continuous Arabic page numbers throughout multiple appendix volumes, determining volume splits, adding indices and bookmarks, and applying Bates numbers can be a challenge – with each item depending on another in some way. The following table is a compilation of the local rules by district (as of 3.29.16), and the step-by-step guide that follows is intended to simplify the processes required to meet the new rules.

(The 4th COA Local Rule 5 requirements will go into effect 4/4/2016 and are included in the table)

CA COA **Digital Appendix Requirements**	1st COA (SF)	2nd COA (LA)	3rd COA (Sac)	4th COA (SD, OC, RS)	5th COA (Fresno)	6th COA (Santa Clara)
Local Rule	16		5	5	8	2
A. File Preparation						
1. Searchable PDF	X		X	X	X	X
2. Scanning resolution of 300 dpi; B/W; <u>not</u> grayscale; use color only for images, charts	X		X	X	X	X
B. Indices						
1. Master Chron and Alpha in first volume	X		X	X	X	X
2. Individual Chron in all other volumes	X		X	X	X	
3. Individual Alpha in all other volumes				X		
C. Bookmarks						
1. Linked to indices in each volume						X
2. Linked to each listed exhibit or attachment	X		X	X	X	X
3. Linked to each listed sub-attachment						X
4. Name must include "Tab no., Description"	X		X	X		
5. All "zoom" settings must be "Inherit Zoom"					X	
D. Assembled Volumes						
1. Maximum individual volume size 25 MB	X		X	X	X	X
2. Cover pages to include Volume no. and page range	X		X	X	X	
3. Consecutive Arabic page/Bates numbering from the cover of the first volume continuing throughout the volumes	X		X	X	X	X
4. Appendices ***may*** be delivered on optical reading media under some circumstances	X		X	X		
5. Number in Acrobat page counter must be synched with page/Bates numbering					X	

Special thanks is given to Blake A. Hawthorne, Clerk of the Texas Supreme Court and the Texas Supreme Court for sharing their *Guide to Creating Electronic Appellate Briefs*.

Appendix C

(Sample of an Appellate Appendix)

A123456

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FIVE

JANE DOE,
Plaintiff and Respondent,

XYZ COMPANY, INC.,
Defendant and Appellant.

APPEAL FROM SAN FRANCISCO COUNTY SUPERIOR COURT
CASE NO. CGC-12345678 • HON. ERNEST H. GOLDSMITH

APPELLANT'S APPENDIX

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ATTORNEYS FOR DEFENDANT AND APPELLANT
XYZ COMPANY, INC.

Jane Doe v. XYZ Company, Inc.
Court of Appeal Case No. A123456

Chronological Index

Jane Doe v. XYZ Company, Inc.
Court of Appeal Case No. A123456

Alphabetical Index

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

[redacted] an individual,

Plaintiff

vs.

[redacted] an Ohio corporation,

Defendants.

CASE NO. [redacted]

COMPLAINT

Labor Code §2699 claims for

1. **Failure To Provide Paid Rest Periods In Violation of Labor Code §§226.7 and 558**
2. **Failure To Pay Minimum Wage In Violation of Labor Code §§1194, 1197, and 1197.1**
3. **Failure To Pay Wages In Violation of Labor Code §§221 and 223**
4. **Failure To Provide Wages Statements In Violation of Labor Code §226**
5. **Failure Timely To Pay Wages In Violation of Labor Code §204**
6. **Failure Timely To Pay Wages Upon Termination of Employment in Violation of Labor Code §§201-202**

Plaintiff [redacted] hereby alleges as follows:

INTRODUCTION

1. Defendant [redacted] has committed, and is continuing to commit, numerous violations of the California Labor Code with respect to its employees earning commissions. Defendant in part fails to provide its commissioned employees with paid rest

periods as required by order of the Industrial Welfare Commission and by Labor Code §§226.7 and 558; fails to pay its commissioned employees minimum wage for non-commission-producing activities in violation of various provisions of the Labor Code, including §§1194, 1197, 221, and 223; fails to provide complete and accurate wage statements as required by Labor Code §226; fails timely to pay wages as required by Labor Code §204; and fails timely to pay wages upon the termination of an employee's employment as required by Labor Code §§201-203.

2. Plaintiff [redacted] is employed by Defendant [redacted] in its San Francisco store. Plaintiff earns commissions and has been aggrieved by the practices described in this complaint. Plaintiff brings this action against Defendant pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") codified at Labor Code §2698 et seq.

3. This is a representative PAGA action. Plaintiff does not seek certification of a class. Instead, in accordance with Labor Code §2699, Plaintiff brings this action on behalf of the state of California, and on behalf of herself and other current or former employees in California against whom one or more of the alleged violations was committed. Plaintiff does not seek damages at law but, rather, asserts claims for civil penalties and statutory remedies.

JURISDICATION AND VENUE

4. Venue is proper in this Court because Plaintiff is employed by Defendant in the City and County of San Francisco; Plaintiff is informed and believes that Defendant is licensed to do business, and is doing business, in this County; and the causes of action at issue, or some part of the causes of action, arose in this County.

5. This Court has jurisdiction over Defendant [redacted] because Defendant has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice; and Plaintiff is informed and believes that Defendant is licensed to do business, and is doing business, in California.

6. Pursuant to the California Constitution, Article VI, Section 10, this Court has original jurisdiction over all claims asserted herein. This Court, rather than a federal court, also

properly has jurisdiction over this action because Plaintiff asserts only state-law claims; Plaintiff's potential, individual share of the civil penalties at issue is less than $75,000; and this matter is not a class action and thus is not subject to federal jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d).

PARTIES

7. Plaintiff [redacted] is, and at all times relevant has been, a citizen of the State of California and a resident of the City and County of San Francisco. Plaintiff [redacted] is, and at all times relevant has been, employed by Defendant in San Francisco, California.

8. Defendant [redacted] ("Defendant" or "[redacted] is an Ohio corporation with its principle place of business in New York, New York.

9. Defendant [redacted] is, and at all times relevant has been, doing business in the State of California. Defendant currently maintains eleven stores in this State. These stores (collectively the "California Stores") are at the following California locations, Stanford Shopping Center in Palo Alto; Century City in Los Angeles; Beverly Center in Los Angeles; Sherman Oaks Fashion Square in Sherman Oaks; Newport Fashion Island in Newport; San Francisco Centre in San Francisco; Fashion Valley in San Diego; South Coast Plaza in Costa Mesa; Santa Monica Place in Santa Monica; Glendale Galleria in Glendale; and the Livermore Premium Outlets (also known as the "Livermore Paragon Outlets") in Livermore.

PLAINTIFF'S PRE-FILING NOTICE

10. On July 1, 2014, Plaintiff sent a written notice regarding her representative PAGA claims to the Labor and Workforce Development Agency ("LWDA") and [redacted] via certified mail.

11. Plaintiff's notice informed the LWDA and [redacted] of the specific provisions of the Labor Code alleged to have been violated, and included facts and theories to support the alleged violations.

12. On or about August 7, 2014, the LWDA authorized Plaintiff to commence a civil action pursuant to Labor Code §2699 by notifying [redacted] and Plaintiff via certified

mail that the LWDA does not intend to investigate the alleged violations described in Plaintiff's July 1, 2014 PAGA notice.

13. More than 33 days have passed since Plaintiff mailed the July 1, 2014 PAGA notice to the LWDA and [redacted] has not provided any notification that it has cured any of the alleged violations described in Plaintiff's July 1, 2014 PAGA notice.

14. Plaintiff has fully complied with the notice provisions of Labor Code §2699.3 and has satisfied all pre-filing requirements for commencing this civil action.

THE AGGRIEVED EMPLOYEES

15. Plaintiff brings this representative PAGA action on behalf of the state of California, and on behalf of herself and other current or former employees of Bloomingdale's who worked in any of Defendant's California Stores as non-managerial sales associates earning commissions during the applicable statutory period prior to the date of Plaintiff's July 1, 2014 PAGA notice and continuing until such date as this matter is resolved (collectively the "Aggrieved Employees.")

GENERAL ALLEGATIONS

16. Plaintiff [redacted] currently is – and since, approximately June of 2011, has been – employed by Bloomindale's at its San Francisco Centre store as a sales associate earning commissions.

17. Plaintiff is informed and believes that [redacted] maintains a "commission against draw" compensation system (as described in this paragraph) for all Aggrieved Employees. The draw is calculated by multiplying the total number of hours that an employee is on the clock during a given week by a guaranteed hourly rate. If the total commissions earned by the employee during that week are less than the guaranteed draw, [redacted] will pay the employee the difference. However, the employee will be deemed to be "in deficit" for the amount that Bloomindale's pays above the commissions earned and will be required to repay this amount out of future commissions. Thus, under Defendant's "commission against draw" compensation system, Aggrieved Employees ultimately earn only the commissions that they can generate through sales [redacted] merchandise.

18. [redacted] is required to provide Plaintiff and the other Aggrieved Employees with paid rest periods in accordance Industrial Welfare Commission Order No. 7-2001("Wage Order No. 7") and other relevant law. Wage Order No. 7, subdivision 12(A) provides,

> Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

19. Wage Order No. 7, subdivision 4(B) further provides, "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." Thus, even if employees are paid on a commission basis, rest periods must be separately compensated. And employers must pay this separate compensation at no less than the minimum-wage rate required by law.

20. [redacted] does not pay the Aggrieved Employees minimum wage for their rest breaks and does not provide any separate compensation for rest breaks. [redacted] pays the Aggrieved Employees on a commission basis and – despite the fact that an employee relieved of duty and taking a rest break cannot earn commissions during the break – has not established any mechanism for ensuring that rest breaks are separately compensated. Nor does it otherwise provide the paid 10-minute rest periods required by Wage Order No. 7.

21. In addition to not paying any Aggrieved Employees minimum wage for rest breaks, [redacted] also does not pay Aggrieved Employees minimum wage for performing tasks that cannot lead to earning of commissions.

22. On or about May 24, 2014, Bloomindale's introduced at its San Francisco Centre store the so-called "Store-to-Door" Program – pursuant to which Plaintiff and other Aggrieved Employees in San Francisco must take time away from sales activities that have the potential to generate commissions in order to gather merchandise previously ordered by [redacted]

customers. The merchandise to be gathered by the Aggrieved Employees in San Francisco is identified on a "Pick List" provided to them by their managers. [redacted] does not separately compensate Aggrieved Employees in San Francisco for non-commission-producing time devoted to Defendant's "Store-to-Door" Program.

23. Plaintiff is informed and believes that [redacted] also has implemented the "Store-to-Door" Program at one or more of its other California Stores and that [redacted] does not separately compensate Aggrieved Employees at such other stores for non-commission-producing time devoted to the "Store-to-Door" Program.

24. Plaintiff is further informed and believes that, throughout the relevant period, [redacted] has failed to pay Aggrieved Employees at all of its California Stores for additional non-commission-producing activities: such as, attending morning meetings; performing other pre-opening tasks; performing clean-up and other required tasks after stores have closed; and servicing customers who purchased merchandise on line by, for example, taking in returns from on-line purchasers and assisting customers who are picking up and/or trying on merchandise purchased through Defendant's "Buy Online and Pick up in Store" (a.k.a. "BOPS") program.

25. [redacted] violates numerous provisions of the Labor Code through its failure to provide paid 10-minute rest periods (and related conduct), and its failure to not pay Aggrieved Employees minimum wage for work related to the "Store-to-Door" Program or other non-commission-producing tasks (and related conduct). The provisions of the Labor Code that [redacted] has violated and continues to violate include §226.7, §558, §1194, §1197, §1197.1, §221, §223, §226, §204 and §§201-203. As discussed in greater detail below, Plaintiff asserts representative PAGA claims for Defendant's violations of the Labor Code and seeks all available relief, including all civil penalties recoverable pursuant to Labor Code §2699 and attorneys' fees.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Failure To Provide Paid Rest Periods In Violation of Labor Code §§226.7 and 558)

26. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as though fully set forth herein.

27. California Labor Code §226.7(c) in part provides,

> If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission . . . , the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

28. As discussed above, [redacted] fails to provide the Aggrieved Employees with paid rest breaks in accordance with Wage Order No. 7. Section 226.7 therefore requires [redacted] to pay each Aggrieved Employee "one additional hour of pay at the employee's regular rate of compensation for each workday that the . . . rest . . . period is not provided." Such sums sometimes are referred to as "premium payments."

29. [redacted] has never made any §226.7 premium payment to Plaintiff to compensate her for not receiving the paid rest periods required by Wage Order No. 7.

30. Plaintiff is informed and believes that [redacted] has not made, and is not making, §226.7 premium payments to any Aggrieved Employees to compensate them for not receiving the paid rest periods required by Wage Order No. 7.

31. California Labor Code §558 in part provides,

> (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
>
> > (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> >
> > (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the

employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

32. [redacted] has violated and continues to violate both "[a] provision regulating hours and days of work in any order of the Industrial Welfare Commission" – the Wage Order No. 7, subdivision 12(A) provision requiring paid rest periods – and Labor Code §226.7. Defendant thus is liable for, among other things, civil penalties assessed pursuant to Labor Code §558(a).

33. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

SECOND CAUSE OF ACTION

(Failure To Pay Minimum Wage In Violation of Labor Code §§1194, 1197, and 1197.1)

34. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as though fully set forth herein.

35. California Labor Code §§1194, 1197, and 1197.1 confirm an employer's obligation to pay minimum wage. Section1197 provides, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Section 1194 directs that each employee is entitled to receive the "legal minimum wage" "[n]otwithstanding any agreement to work for a lesser wage." Section 1197.1 in part identifies civil penalties to be assessed against "[a]ny employer . . . who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission."

36. [redacted] does not pay Aggrieved Employees minimum wage for rest breaks, and does not pay Aggrieved Employees minimum wage minimum wage for work related to the "Store-to-Door" Program or other non-commission-producing tasks. This failure to pay Aggrieved Employees minimum wage violates §§1194, 1197, and 1197.1.

37. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

THIRD CAUSE OF ACTION

(Failure To Pay Wages In Violation of Labor Code §§221 and 223)

38. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as though fully set forth herein.

39. California Labor Code §§221 and 223 preclude an employer from attempting to circumvent its obligation to pay the minimum wage, or any higher wage required under the terms of an employee's contract, for each hour worked – or for rest breaks – by averaging compensated and uncompensated time together. Section 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Section 223 further provides, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

40. Plaintiff is informed and believes that [redacted] contends that it need not separately compensate an Aggrieved Employee for rest breaks, and need not pay an Aggrieved Employee minimum wage for work related to the "Store-to-Door" Program or other non-commission-producing tasks, so long as the total commission-based compensation paid to the employee for a given pay period would – if divided by the employee's total hours for the pay period (including rest break time) – work out to an average hourly wage equal to or greater than the legal minimum wage.

41. Such an approach violates the law. Pursuant to §221 and §223, [redacted] must pay the Aggrieved Employees at least the statutory minimum wage for all hours worked, and for rest breaks. [redacted] may not lawfully rely on a pay-averaging approach.

42. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

FOURTH CAUSE OF ACTION

(Failure To Provide Wages Statements In Violation of Labor Code §226)

43. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as though fully set forth herein.

44. California Labor Code §226 requires every employer to furnish each of its employees, at the time of each payment of wages, with a written, accurate, complete, itemized wage statement.

45. [redacted] violates §226 because the wage statements it provides to Aggrieved Employees are not accurate and complete and do not include all required information.

46. For example, §226(a)(9) requires that a wage statement include "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Because [redacted] does not separately compensate Aggrieved Employees for rest breaks, for work related to the "Store-to-Door" Program, or for other non-commission-producing tasks, the applicable hourly rate for all non-commission-producing activities performed by Aggrieved Employees is zero. The wage statements furnished by [redacted] do not reflect this zero-dollar rate and [redacted] does not otherwise inform each Aggrieved Employee of the number of uncompensated hours for each pay period.

47. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

FIFTH CAUSE OF ACTION

(Failure Timely To Pay Wages In Violation of Labor Code §204)

48. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as though fully set forth herein.

49. California Labor Code §204 in part provides, "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."

50. [redacted] has designated Fridays as regular paydays and pays its employees weekly.

51. However, as discussed in detail above, [redacted] does not pay the Aggrieved Employees "all wages earned." [redacted] does not pay Aggrieved Employees

the minimum wage due for work related to the "Store-to-Door" Program or other non-commission-producing tasks. [redacted] also does not pay Aggrieved Employees the minimum wage due for rest periods or the §226.7 "additional hour of pay at the employee's regular rate of compensation for each workday that the . . . rest . . . period is not provided" due as a result of Defendant's failure separately to compensate Aggrieved Employees for rest periods. [redacted] thus violates §204.

52. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

SIXTH CAUSE OF ACTION

(Failure Timely To Pay Wages Upon Termination of Employment in Violation of Labor Code §§201-202)

53. Plaintiff realleges and incorporates by reference all of the preceding paragraphs as though fully set forth herein.

54. California Labor Code §§201and 202 require an employer timely to pay all wages due to an employee upon termination of the employee's employment. Section 203 in part identifies civil penalties to be assessed against "an employer [that] willfully fails to pay, without abatement or reduction, in accordance with Sections 201. . .[or] 202 . . . any wages of an employee who is discharged or who quits . . . ."

55. [redacted] violates §§201and 202, and is liable for penalties under §203, because it does not timely all pay wages due to Aggrieved Employees upon termination of employment. Plaintiff is informed and believes that, upon the termination of an Aggrieved Employee's employment, Bloomingdale's (a) does not pay any of the accrued the minimum wages due for work related to the "Store-to-Door" Program or other non-commission-producing tasks; and (b) does not pay accrued minimum wages due for rest periods or any accrued §226.7 premium payments due as a result of Defendant's failure separately to compensate Aggrieved Employees for rest periods.

56. Plaintiff is further informed and believes that Defendant's failure to make these payments to Aggrieved Employees upon termination of employment is "willful."

57. Wherefore, Plaintiff requests an award of civil penalties and other relief against Defendant as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendant, for:

a. All appropriate penalties provided for under the California Labor Code and recoverable pursuant to PAGA – including all civil penalties and other remedies recoverable pursuant to Labor Code §§203, 226(e), 226.7, 558, 1197.1, and 2699;

b. For violations of the California Labor Code, except those for which a civil penalty is otherwise specifically provided, civil penalties assessed in accordance with Labor Code §2699(f)(2) – a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars ($200) for each Aggrieved Employee per pay period for each subsequent violation;

c. Attorneys' fees as allowed by California Labor Code §2699(g) or other applicable law;

d. Prejudgment and post-judgment interest as allowed by law;

e. Costs of suit; and

f. Any further relief that may be deemed just and equitable.

DATED: August 15, 2014

CORNERSTONE LAW GROUP

By: _____
Gordon W. Renneisen
Attorneys for Plaintiff
[redacted]

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Attorneys for Defendant
[redacted]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

[redacted] an individual, Plaintiff, v. [redacted] an Ohio Corporation, Defendant.	Case No. [redacted] **DEFENDANT [redacted] S ANSWER TO PLAINTIFF [redacted] TANGUILIG'S COMPLAINT** Complaint Filed: 8.15.14

Defendant [redacted] ("Defendant" or "[redacted] hereby answers Plaintiff [redacted]s ("Plaintiff") unverified Complaint as follows:

GENERAL DENIAL

Pursuant to Code of Civil Procedure section 431.30(d), Defendant generally denies each, every, and all of the allegations contained in Plaintiff's Complaint.

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AFFIRMATIVE DEFENSES

By way of affirmative defenses to the allegations of the Complaint herein, Defendant alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, fail to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, should be dismissed or stayed because Plaintiff is subject to a written arbitration agreement requiring her to submit any employment-related disputes to final and binding arbitration.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, or should be stayed to the extent Plaintiff and/or any aggrieved employees have agreed to arbitrate any or all of the purported causes of action asserted in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, or should be stayed to the extent Plaintiff and/or any aggrieved employees have agreed to arbitrate alleged violations of the California Labor Code on which Plaintiff's claims for civil penalties under the Labor Code Private Attorneys General Act, Labor Code section 2698 *et seq.* (hereafter "PAGA"), are predicated, namely, alleged violations of Labor Code sections 201, 202, 204, 221, 223, 226, 226.7, 558, 1194, 1197 and 1197.1.

FIFTH AFFIRMATIVE DEFENSE

By voluntarily agreeing to [redacted] written arbitration agreement, and not opting out of arbitration, Plaintiff agreed to relinquish the right to pursue a representative action for PAGA penalties as a Private Attorney General. At the time of her hire by [redacted] Plaintiff was pursuing a PAGA action against her former employer based on the same or similar violations of the California Labor Code as alleged in this action, and she was represented by

counsel. Plaintiff knowingly agreed to accept individual arbitration of any claims she might have against [redacted] rather than maintain her right to a judicial forum that would have allowed her to pursue class and representative PAGA claims against [redacted]

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, or should be stayed to the extent Plaintiff and/or any aggrieved employees have agreed to arbitrate claims for statutory or other types of penalties other than civil penalties provided by PAGA, including Plaintiffs claims for "statutory remedies," "all available relief," "other relief," "penalties under §203," and "other remedies recoverable pursuant to Labor Code §§203, 226(e), 226.7, 558, 1197.1."

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, to the extent Plaintiff and/or any aggrieved employees have failed to exhaust any applicable administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, to the extent Plaintiff seeks remedies on behalf of herself or any aggrieved employees based on alleged violations of the Labor Code which have occurred, or will occur, after Plaintiff's July 1, 2014 PAGA notice to the California Labor and Workforce Development Agency ("LWDA").

NINTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, to the extent Plaintiff's July 1, 2014 PAGA notice to the LWDA failed to sufficiently set forth the facts and theories supporting Plaintiff's claims that Defendant violated sections of the Labor Code.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, to the extent Plaintiff's July 1, 2014 notice to the LWDA failed to

disclose to the LWDA that Plaintiff previously had served as a Private Attorney General under PAGA and her PAGA claims were dismissed for failure to bring them to trial within five years as required by California Code of Civil Procedure section 583.310.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to prosecute this action as a Private Attorney General under PAGA because she failed to diligently prosecute PAGA claims in a prior action which was dismissed due to her failure to bring them to trial within five years as required by Labor Code section 583.310.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred by the doctrines of laches, estoppel, waiver and/or unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, settled and/or released in whole or in part, and/or recovery is precluded in whole or in part, and/or recovery is subject to set-off to the extent there are settlements, judgments and/or resolutions in other legal actions brought against Defendant by or on behalf of Plaintiff and/or any aggrieved employees, or to the extent there have been voluntary payments by Defendant with respect to some or all of the claims asserted in Plaintiff's Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are duplicative of another action pending against Defendant which alleges, in part, the same claims under PAGA as the present action, namely, claims predicated on alleged violations of Labor Code sections 201, 202, 203 and 1194. Accordingly, the present action, in whole or in part, is subject to dismissal, abatement and/or coordination to avoid piecemeal litigation, inconsistent rulings, and duplication of time and resources by the parties and the courts.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, insofar as they are redundant and/or duplicative of other causes of

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action alleged in the Complaint, and/or otherwise improperly seek multiple recoveries for the same alleged conduct or injury.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, because Plaintiff cannot meet the standards for a representative action and such an action would be unmanageable. The facts and law common to the case are insignificant compared to the individual facts and issues particular to Plaintiff and other current and/or former aggrieved employees.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, because Plaintiff cannot fairly and adequately represent the interests of the aggrieved employees and/or the State of California.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, is barred, in whole or in part, pursuant to the Eighth Amendment to the United States Constitution and Article I, Section 17 of the California Constitution to the extent Labor Code section 2698 *et seq.* and other applicable statutes operate to impose excessive fines and/or double penalties, and/or are confiscatory, arbitrary or oppressive. Because Defendant's payroll period is one week in length, Defendant is subject to twice the amount of potential civil penalties under PAGA as an employer with a payroll period of two weeks in length.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's First Cause of Action is barred because Defendant authorized and permitted Plaintiff and the aggrieved employees to take paid rest breaks in compliance with Labor Code section 226.7. To the extent Plaintiff and/or the aggrieved employees did not take paid rest breaks, they did so voluntarily and they were compensated at least the minimum wage for the time they worked instead of taking rest breaks.

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TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's First and Second Causes of Action are barred because—contrary to Plaintiff's allegations—the total compensation received by Plaintiff and the aggrieved employees during each pay period averaged out to more than minimum wage for each hour worked, including time spent taking rest breaks and performing non-commission-producing tasks.

TWENTY-FIRST AFFIRMATIVE DFENSE

Plaintiff's First and Second Causes of Action are barred because Plaintiff and the aggrieved employees were paid an hourly draw which exceeded minimum wage for each hour worked during each pay period, including time spent taking rest breaks and performing non-commission-producing tasks.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's First and Second Causes of Action are barred because Plaintiff and the aggrieved employees were paid in accordance with Defendant's lawful commission pay plans.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's Third Cause of Action fails to state a cause of action under California Labor Code sections 221 and 223 because these sections have no application to Defendant's lawful commission pay plans, and Plaintiff and/or the aggrieved employees did not suffer a forfeiture of earned wages, commissions or other compensation.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Fourth Cause of Action fails to state a cause of action under California Labor section 226 because this section does not require itemized wage statements to reflect "zero-dollar rates" and because Defendant compensated Plaintiff and the aggrieved employees for all hours worked.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Fourth Cause of Action fails to state a cause of action under California Labor Code section 226, in whole or in part, because it fails to allege that Plaintiff and the aggrieved employees suffered any injury or damage as a result of the itemized wage statements they received from Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Fifth Cause of Action fails to state a cause of action under California Labor Code section 204 because Section 204 regulates the timing of wage payments to employees, not the amounts. *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Sixth Cause of Action fails to state a cause of action under California Labor Code sections 201 and 202 because they apply only to former employees, not current employees such as Plaintiff, and Plaintiff lacks standing to assert such claims on behalf of former employees.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's Sixth Cause of Action fails to state a cause of action under California Labor Code sections 201 and 202 because Defendant's alleged failure to pay final wages was not willful.

TWENTY-NINTH AFFIRMATIVE DEFENSE

As a proxy for the LWDA and its subordinate agencies, including the Division of Labor Standards Enforcement and the Department of Industrial Relations, Plaintiff is estopped to contend that Defendant's commission pay program violates California laws requiring the payment of at least the minimum wage for all hours worked. Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are contrary to the positions of the State Labor Commissioner in its Enforcement Policies and Interpretations Manual and its published Opinion Letter 1987.03.03. Plaintiff has a conflict of interest with the State Labor Commissioner and cannot serve as a proxy for the State Labor Commissioner in this case. Plaintiff lacks standing to articulate positions in this matter contrary to the published positions of the State Labor Commissioner.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to Code of Civil Procedure sections 337, 338, 339 and 340, and Labor Code section 2699.3, to the extent the conduct complained of occurred outside the time frames set forth in those statutes.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's PAGA claims are barred, in whole or in part, to the extent Plaintiff and/or the aggrieved employees are not "aggrieved" employees as that term is defined in Labor Code section 2699(c).

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff is barred from recovering any damages, or any recovery must be reduced, by virtue of Plaintiff's and the aggrieved employees' failure to exercise reasonable diligence to mitigate their alleged damages.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, because any uncompensated time was *de minimis*.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint as a whole, and each purported cause of action alleged therein, are barred, in whole or in part, to the extent certain of the interests of Plaintiff and the alleged aggrieved employees are in conflict with the interests of all or certain alleged aggrieved employees.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by the Complaint;
2. That the Complaint be dismissed in its entirety with prejudice;
3. That Plaintiff be denied each and every demand and prayer for relief contained in the Complaint;
4. For cost of suits incurred herein, including reasonable attorneys' fees; and
5. For such other and further relief as the Court deems just and equitable.

Dated: September 17, 2014

JACKSON LEWIS P.C.

By: _____
David S. Bradshaw

Attorneys for Defendant
[redacted]

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis P.C., 801 K Street, Suite 2300, Sacramento, California 95814.

On September 17, 2014, I served the within:

DEFENDANT [redacted]S ANSWER TO PLAINTIFF [redacted] COMPLAINT

on the parties in said cause:

by personally delivering a true and correct copy thereof to the person at the address set forth below, in accordance with Code of Civil Procedure section 1011(a).

X by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid for deposit in the United States Post Office mail box, at my business address shown above, following Jackson Lewis P.C.'s ordinary business practices for the collection and processing of mail, of which I am readily familiar, and addressed as set forth below. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

by depositing a true and correct copy thereof enclosed in a sealed envelope with delivery fees thereon fully prepaid in a box or other facility regularly maintained by Federal Express or delivering said copy to an authorized courier or driver authorized by Federal Express to receive documents, addressed as set forth below.

by forwarding a true and correct copy thereof electronically from e-mail address, baumg@jacksonlewis.com, between approximately _____ and _____ to the person(s) at the e-mail address(es) set forth below.

Gordon W. Renneisen Harry G. Lewis Jennifer A. Donnellan Cornerstone Law Group 575 Market Street, Suite 3050 San Francisco, CA 94105	Attorneys for Plaintiff Telephone: (415) 625-5025 Facsimile: (415) 655-8236 E-mail: grenneisen@cornerlaw.com E-mail: hlewis@cornerlaw.com E-mail: jdonnellan@cornerlaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of September, 2014 at Sacramento, California.

Gail Kristine Baum

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Attorneys for Defendant [redacted]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

[redacted] an individual,

Plaintiff,

v.

[redacted] an Ohio Corporation,

Defendant.

Case No. [redacted]

DEFENDANT [redacted]S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION

RESERVATION NO. 010915-12

Date: March 17, 2015
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Ernest H. Goldsmith

Complaint Filed: 8.15.14
Trial Date: None Set

TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on March 17, 2015, at 9:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 302 of the above-entitled Court located at 400 McAllister Street, San Francisco, California 94102, Defendant [redacted] ("Defendant") will and hereby does move this Court for an Order (1) compelling Plaintiff

[redacted] ("Plaintiff") to arbitrate her individual claims pursuant to [redacted] Inc.'s arbitration agreement contained in its Solutions InSTORE dispute resolution program, and (2) staying this action pending completion of the arbitration as required by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"). The motion is made on the following grounds:

1. Pursuant to the FAA, Plaintiff must be compelled to arbitrate her claims in this action in accordance with the terms and conditions of the arbitration agreement she entered into with Defendant.

2. The parties' arbitration agreement is valid and enforceable under the FAA, as Plaintiff knowingly entered into the arbitration agreement with Defendant and did not opt out of the arbitration agreement although given the opportunity to do so, and the claims at issue in this action are expressly covered by the arbitration agreement. *Howsam v. Dean Witter Reynolds, Inc.* (2002) 537 U.S. 79; *Omar v. Ralphs Grocery Co.* (2004) 118 Cal.App.4th 955; *Craig v. Brown & Root* (2000) 84 Cal.App.4th 416; *Asmus v. Pac. Bell* (2000) 23 Cal.4th 1.

4. The FAA mandates that this matter be stayed pending completion of the arbitration if this motion is granted. 9 U.S.C. § 3.

The motion is based on this Notice; the supporting Memorandum of Points and Authorities, Compendium of Evidence consisting of the Declarations of [redacted] and [redacted] with all exhibits thereto, and Request for Judicial Notice, all of which are filed and served concurrently herewith; the pleadings and papers on file herein; and upon such other arguments and evidence as may be made or presented at or before the time of the hearing.

Dated: January 12, 2015

JACKSON LEWIS P.C.

By: /s/ David S. Bradshaw
David S. Bradshaw

Attorneys for Defendant [redacted]

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Attorneys for Defendant [redacted]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

[redacted]
an individual,

Plaintiff,

v.

[redacted]
an Ohio Corporation,

Defendant.

Case No. [redacted]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT [redacted]S MOTION TO COMPEL ARBITRATION

Date: March 17, 2015
Time: 9:30 a.m.
Dept: 302
Judge: Hon. Ernest H. Goldsmith

Complaint Filed: 8.15.14
Trial Date: None Set

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Federal Statutes

I. INTRODUCTION

Plaintiff [redacted] ("[redacted] expressly agreed that any legal disputes arising out of her employment with Defendant [redacted] (hereinafter, "[redacted] would be resolved on an individual basis through binding arbitration pursuant to [redacted] dispute resolution program called "Solutions InSTORE." Importantly, this agreement to arbitrate was not foisted onto [redacted] Rather [redacted] like every [redacted] new hire, had the opportunity to opt out of the arbitration component of Solutions InSTORE and continue her employment with [redacted] but she declined to do so.

In an effort to avoid her agreement to arbitrate, [redacted] brought a representative action pursuant to California's Private Attorneys General Act, Labor Code § 2699 *et seq.* ("PAGA") ("Plaintiff does not seek damages at law but, rather, asserts claims for civil penalties and statutory remedies") (Complaint, ¶ 3), asserting six causes of action against [redacted] (1) Failure to Provide Paid Rest Breaks in Violation of Labor Code §§ 226.7 and 558; (2) Failure to Pay Minimum Wage in Violation of Labor Code §§ 1194, 1197, and 1197.1; (3) Failure to Pay Wages in Violation of Labor Code §§ 221 and 223; (4) Failure to Provide Wages Statements in Violation of Labor Code § 226; (5) Failure Timely to Pay Wages in Violation of Labor Code § 204; and (6) Failure Timely to Pay Wages Upon Termination of Employment in Violation of Labor Code §§ 201-202. This maneuver of cloaking her claims in PAGA, does not, however, render the parties' arbitration agreement and its representative action waiver ineffective because, unlike in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (cert. pending), the agreement to arbitrate at issue here was not a condition of employment. Plaintiff could have opted out, but didn't. Because the instant action is distinguishable from *Iskanian*, the Court can and must: (1) compel the arbitration of [redacted] individual claims; and (2) stay this litigation as required by the Federal Arbitration Act ("FAA").

II. FACTS

A. The Solutions InSTORE Program

In 2003, [redacted] (formerly known as Federated Department Stores, Inc.) developed and implemented a comprehensive internal early dispute resolution program called Solutions

InSTORE (hereinafter, the "Solutions InSTORE Program"). (Declaration of [redacted] "[redacted] Decl.," ¶ 4) The Solutions InSTORE Program is a four-step program that gives employees of Macy's, and its wholly owned subsidiary [redacted] an opportunity to raise and resolve workplace disputes early and fairly. (*Id.* at ¶¶ 4, 8)

The four steps of the Solutions InSTORE Program are the following:

Step 1: "Open Door." Employees are encouraged to bring their concerns to a supervisor or member of local management.

Step 2: The employee submits a written request for review and the request is assigned to a Human Resources professional for investigation and reviewed with an Associate Relations Vice President or Senior Vice President of Human Resources who was not involved in the underlying decision.

Step 3: The employee submits a written Request for Reconsideration of the Step 2 decision. If the dispute involves claims related to layoffs, harassment, discrimination, reduction in force, or other alleged statutory violations, a trained professional investigates it thoroughly and objectively. Other disputes, including disputes over terminations and final warnings, may be submitted to a Peer Review Panel at the employee's option. In either case, local management is not involved in the decision at this step.

Step 4: Binding arbitration. Employees who did not return an opt-out Election Form within the prescribed time limits agree to arbitrate their (employment-related and other) claims against Macy's that fall within the scope of the arbitration agreement. Step 4 arbitration is administered by the American Arbitration Association ("AAA").

(*Id.* at ¶ 8). By accepting or continuing employment with [redacted] all employees agree to Step-4 Arbitration. (*Id.* at Ex. A, p. 5) However, an employee can opt out of arbitration by completing an Election Form and mailing it back to the Solutions InSTORE post office box address listed on the form within the prescribed time frame. (*Id.* at ¶¶ 9, 22, Ex. A, p. 5, Ex. B, p. 10, Ex. C) An employee's decision to opt out of Step 4-Arbitration is confidential. (*Id.* at ¶ 12). No one in the employee's store or other work location has access to this information. (*Id.*) In fact, only a select few company employees in Ohio have access to this information and then only when such information is pertinent to the handling of an employee's claim. (*Id.*) An employee's election to participate in or opt out of arbitration also has no effect on his/her employment. (*Id.* at ¶ 11) [redacted]s has adopted a policy that strictly prohibits retaliation, in any form, against an employee based on his/her election. (*Id.*)

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B. The Solutions InSTORE Program Is a Fair, Equitable and Efficient Process for Resolving Employment Disputes

The Solutions InSTORE Program is designed to ensure that employees are treated fairly at every step:

- **The Employee Is in Control.** Employees are not required to go through Steps 1, 2 or 3 before proceeding to Step 4-Arbitration (*Id.* at ¶ 8), but if they choose to go through Steps 1, 2 or 3 before Step 4-Arbitration, only the employee has the right to proceed to the next step (*Id.* at ¶ 10).
- **Minimal or No Fees or Costs to the Employee.** An employee initiating arbitration pays a filing fee of one day's pay or $125, whichever is less. [redacted] pays the other arbitration costs. (*Id.* at ¶ 14(a), Ex. A, p. 14, Ex. B, pp. 9-11)
- **The Employee Decides Whether Lawyers Are Involved.** If the employee decides not to have an attorney present at the arbitration, [redacted] also appears without an attorney. (*Id.* at ¶ 14(b), Ex. A, p. 9, Ex. B, pp. 9-11)
- **Reimbursement of Certain Costs/Fees.** If the employee is represented by an attorney at the arbitration, [redacted] reimburses legal fees up to $2,500 over each continuously rolling 12-month period. (*Id.* at ¶ 14(c), Ex. A, p. 15, Ex. B, pp. 9-11) If the employee is not represented by an attorney, Macy's will reimburse the employee for incidental costs up to $500 over each continuously rolling 12-month period. (*Id.*)
- **Governing Rules.** The arbitration is administered by AAA under the Solutions InSTORE Program Plan Document rules, but may be supplemented by the AAA employment arbitration rules. (*Id.* at ¶ 14(f), Ex. A, p. 6)
- **Mutuality.** If an employee agrees (and thus is required) to arbitrate claims against [redacted] the company agrees (and thus is required) to resolve claims against the employee by arbitration as well. (*Id.* at ¶ 13, Ex. A, p. 6)
- **Discovery.** Discovery includes document disclosures, 20 interrogatories (each of which may contain a request for production of documents), and 3 depositions per side.

The arbitrator may allow additional discovery. (*Id.* at ¶ 14(d), Ex. A, p. 10)

- **No Curtailment of Ultimate Relief or Limitations Periods.** The arbitrator has the same power and authority as a judge to grant any ultimate relief under any applicable law. The statutes of limitation that apply to court claims apply equally to arbitration, and are not curtailed in any way by the Solutions InSTORE Program. (*Id.* at ¶ 14(e), Ex. A, pp. 13-15)
- **Written Decision.** The arbitrator must issue a written decision. (*Id.* at ¶ 14(g), Ex. A, p. 14)

The Solutions InSTORE Plan Document describes the types of claims that fall within the ambit of the arbitration agreement. With limited exceptions not pertinent here, the agreement covers all employment-related claims, whether the claims arise under federal, state or local law. (*Id.* at ¶ 14, Ex. A, p. 6) The arbitration agreement explicitly precludes pursuing any claims in arbitration on a representative basis. The agreement expressly provides that it is to be construed and enforced under the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"). (*Id.* at Ex. A, pp. 12, 16)

C. [redacted] Agreed to Arbitration Under the Solutions InSTORE Program

On May 31, 2011, [redacted] began her employment as a commissioned sales associate at the [redacted] store in downtown San Francisco, California, where [redacted] is still employed. At the beginning of her employment, [redacted] educated [redacted] about the Solutions InSTORE Program and its various steps, including Step 4-Arbitration and the opportunity to opt out of arbitration. [redacted]s did this in a variety of ways.

1. The Solutions InSTORE New Hire Brochure and Plan Document

[redacted] provides all new employees with a copy of the Solutions InSTORE New Hire Brochure (the "Brochure"), which contains both the Plan Document and the opt-out Election Form. (*Id.* at ¶¶ 20-21, Ex. B) The Brochure uses graphics (such as charts and tables) and text to explain each step of the Solutions InSTORE Program in detail. (*Id.* at ¶ 20, Ex. B) The Brochure begins with an overview of the Solutions InSTORE Program and devotes three pages to Step 4-Arbitration, explaining, among other things, how the arbitration process works, that

arbitration is binding and constitutes a waiver by both parties of their rights to file a civil action and to a jury trial, that the arbitration agreement covers most disputes related to the employee's employment, that the employee may opt out of Step 4-Arbitration, and that the company bears the overwhelming majority of the costs and fees associated with the arbitration. (*Id.* at Ex. B, pp. 9-11) The Brochure also emphasizes that if an employee wishes to opt out of Step 4-Arbitration, he/she must submit an election form within 30 days of hire. (*Id.*) Finally, the Brochure indicates how the employee can obtain another copy of the Plan Document or ask any questions he/she may have, either by consulting his/her local human resources representative, e-mailing or calling Macy's Office of Solutions InSTORE, or visiting Macy's publicly-available employee website (www.employeeconnection.net). (*Id.*)

The Plan Document further explains each step of the Solutions InSTORE Program in detail, including most notably Step 4-Arbitration. (*Id.* at Ex. A) Among other things, the Plan Document notifies employees that they agree to arbitration by accepting or continuing employment unless they opt out within the prescribed time frame. (*Id.* at Ex. A, pp. 2, 5) The Plan Document also contains the agreements, rules and provisions that the parties agree will govern their arbitration proceedings, including but not limited to the representative action waiver provision. (*Id.* at Ex. A, p. 12)

On May 31, 2011, [redacted] electronically signed a Solutions InSTORE New Hire Online Acknowledgement form, in which she acknowledged receiving a copy of the Solutions InSTORE Brochure and Plan Document. By signing the form, she also affirmatively acknowledged that understood she had the option to opt out of Step-4 Arbitration by returning the form within 30 days. For a copy of the full acknowledgement, please see [redacted] Decl., ¶ 25, Ex. E and Declaration [redacted] "Veeraraghavan Decl.," ¶ 13, Ex. G)

2. The Opt-Out Election Form

[redacted] affirmatively acknowledged that she received the Solutions InSTORE Brochure containing the Plan Document and the opt-out Election Form. [redacted] Decl., ¶¶ 21-22, Exs. B, C) Like the Brochure, the Election Form makes clear that an employee has 30 days from his/her date of hire to opt out of Step 4-Arbitration and that, if the employee elects not to opt out, he/she will

be assenting to arbitration. (*Id.* at Ex. C.) The Election Form also provides the mailing address of the Office of Solutions InSTORE and states that, if the employee wishes to opt out of Step 4-Arbitration, the employee must complete and mail the Election Form to the Office of Solutions InSTORE within 30 days of his/her hire date. (*Id.*)

D. [redacted] Chose Not to Opt Out of Arbitration

In accordance with Office of Solutions InSTORE procedures, each Election Form is date-stamped when it is opened. (*Id.* at ¶ 15) The form is reviewed for completeness and then loaded into the PeopleSoft System, which is used by the Office of Solutions InSTORE to record employees' opt-out status. (*Id.*) Hard copies of the Election Forms also are maintained in filing cabinets. (*Id.* at ¶ 17) Macy's reviewed the PeopleSoft System and its filing cabinets to determine if [redacted] ever returned an Election Form. (*Id.* at ¶ 26) [redacted] never returned an Election Form. (*Id.*) [redacted] was advised she needed to opt out of arbitration within 30 days of her hire date. [redacted] never opted out. By choosing not to return the Election Form despite an opportunity to do so, [redacted] manifested her consent to Step 4-Arbitration.

III. ARGUMENT

[redacted] provided [redacted] with extensive information explaining the arbitration component of the Solutions InSTORE Program and provided her with an opportunity to opt out of Step 4-Arbitration. By continuing her employment with Macy's and electing to participate in Step 4-Arbitration, [redacted] entered into a binding agreement to arbitrate.

A. Public Policy Favors Enforcing Arbitration Agreements

The FAA applies to the arbitration agreement at issue here; the agreement expressly provides that it is to be construed and enforced under the FAA, and Macy's business is interstate in character. (*Id.* at Ex. A, p. 16).[1] It is well established that the FAA's substantive provisions apply in state and federal courts alike. *Buckeye Check Cashing, Inc. v. Cardegna* (2006)

[1] *EEOC v. Waffle House, Inc.* (2002) 534 U.S. 279, 289 ("Employment contracts, except for those covering workers engaged in transportation, are covered by the [FAA]."); *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119 (same); *Miguel v. JP Morgan Chase Bank, NA* (C.D.Cal. 2013) 2013 U.S.Dist.LEXIS 16865, *8 (same); *Luna v. Kemira Specialty, Inc.* (C.D.Cal. 2008) 575 F.Supp.2d 1166, 1176 (same); *McGill v. Meijer, Inc.* (W.D.Mich. 2011) 2011 U.S.Dist.LEXIS 32844, *6-7 (FAA applied because of express provision in arbitration agreement); *Staples v. Money Tree, Inc.*, (M.D.Ala. 1996) 936 F.Supp. 856, 858 (same).

546 U.S. 440, 445; *Adams*, 532 U.S. at 122; *Perry v. Thomas* (1987) 482 U.S. 483, 489; *Southland Corp. v. Keating* (1984) 465 U.S. 1, 12, 15; *Elliott v. Albright* (1989) 209 Cal.App.3d 1028, 1035. The FAA establishes a "liberal federal policy favoring arbitration agreements." *CompuCredit Corp. v. Greenwood* (2012) 132 S.Ct. 665, 669; *Gilmer v. Interstate/Johnson Lane Corp.* (1991) 500 U.S. 20, 24. The FAA "embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts." *Buckeye Check Cashing*, 546 U.S. at 443. Congress enacted the FAA to eliminate judicial hostility toward arbitration agreements. *Gilmer*, 500 U.S. at 25; *Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 272; *Shearson/American Express, Inc. v. McMahon* (1987) 482 U.S. 220, 225-26. "The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.'" *AT&T Mobility LLC v. Concepcion* (2011) 131 S.Ct. 1740, 1748. The FAA requires state and federal courts alike to "rigorously enforce" arbitration agreements. *Perry*, 482 U.S. at 490; *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614, 626; *Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 221.

B. The Arbitration Agreement Is Valid and Enforceable

"The court's role under the [FAA] is [] limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue. [citations] If the response is affirmative on both counts, then the [FAA] requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130, *accord Kilgore v. KeyBank, N.A.* (2013) 718 F.3d 1052, 1058.

"Whether the parties formed a valid agreement to arbitrate is determined under general California contract law." *City of Vista v. Sutro & Co.* (1997) 52 Cal.App.4th 401, 407. Whether a valid arbitration agreement exists under the FAA "must be made with due regard to the federal policy favoring arbitration." *Id.* Under California law, a valid and enforceable contract has the following elements: (1) parties are capable of contracting; (2) consent; (3) a lawful object; and (4) sufficient consideration. Cal. Code Civ. Proc. § 1550; *Stewart v. Preston Pipeline Inc.* (2005)

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134 Cal.App.4th 1565, 1585-86; *Marshall & Co. v. Weisel* (1966) 242 Cal.App.2d 191, 196. Each element is satisfied here.

Here, there is no question that [redacted] and [redacted] are capable of contracting. It is equally clear that [redacted] consented to [redacted] offer to arbitrate by continuing her employment and electing not to opt out of arbitration. There likewise can be no dispute that [redacted]s made an offer to arbitrate. "'An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his[/her] assent to that bargain is invited and will conclude it.'" *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 271. [redacted] made the offer to arbitrate to [redacted] by: (1) notifying her of the arbitration program; (2) providing her an opportunity to opt out of arbitration; and (3) notifying her that her failure to opt out and her continued employment would constitute her assent to [redacted] offer to arbitrate. ([redacted] Decl., Exs. A-E; Veeraraghavan Decl., ¶¶ 4-14) [redacted] electronic acknowledgment that she (1) received the Brochure and Plan Document, (2) was notified how to opt out of arbitration, and (3) understood she had 30 days to opt out of arbitration show she received the offer to arbitrate. ([redacted] Decl., Ex. E; Veeraraghavan Decl., ¶¶ 13-14, Exs. G, H); 15 U.S.C. § 7001(a)(1)-(2); Cal. Civ. Code § 1633.

[redacted] consented to arbitration by electing not to opt out. Opt-out provisions like the one at issue here are valid and enforceable under California law.[2] When an employee has notice of an arbitration agreement and an opportunity to opt out but elects not to opt out, he/she has manifested his/her consent to the agreement, and his/her decision not to opt out results in a

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[2] *Circuit City Stores, Inc. v. Najd* (9th Cir. 2002) 294 F.3d 1104, 1109; *Rosas v.* [redacted] (C.D.Cal. 2012) 2012 U.S.Dist.LEXIS 121400; *Quevedo v.* [redacted] (C.D.Cal. 2011) 798 F.Supp.2d 1122; *Burnett v. Macy's West Stores, Inc.* (E.D.Cal. 2011) 2011 U.S.Dist.LEXIS 116479; *Hicks v. Macy's Dep't Stores, Inc.* (N.D.Cal. 2006) 2006 U.S.Dist.LEXIS 68268; *Meyer v. T-Mobile USA Inc.* (N.D.Cal. 2011) 836 F.Supp.2d 994, 1002; *Alvarez v. T-Mobile USA, Inc.* (E.D.Cal. 2011) 2011 U.S.Dist.LEXIS 146757, *18-19; *Arellano v. T-Mobile USA, Inc.* (E.D.Cal. 2011) 2011 U.S.Dist.LEXIS 41667, *11.

binding agreement to arbitrate.[3] An employee's decision not to opt out after receiving notice of the agreement signifies the employee's consent to the agreement.[4]

[redacted] also consented to arbitration by continuing her employment following notice of the arbitration program. Under California law, continuation of employment following notification of an arbitration program constitutes assent to arbitration.[5] [redacted] is bound by her arbitration agreement because she continued her employment after receiving notice of the arbitration component of the Solutions InSTORE Program.[6] [redacted] was fully informed about the arbitration component of the Solutions InSTORE Program. By continuing her employment and electing not to opt out, [redacted] assented to arbitration.

There was also sufficient consideration to support the agreement to arbitrate. Continued employment after receiving notice of an arbitration policy constitutes consideration for a binding agreement to arbitrate.[7] [redacted] agreement to bind all entities, divisions and subsidiaries

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[3] *Najd*, 294 F.3d at 1109 (Employee assented to employer arbitration agreement by electing not to opt out); *Circuit City Stores, Inc. v. Ahmed* (9th Cir. 2002) 283 F.3d 1198, 1199-1200 (same); *Quevedo*, 798 F.Supp.2d at 1133-35 (Macy's employee assented to Step 4-Arbitration by continuing employment and electing not to opt out); *Hicks*, 2006 U.S.Dist.LEXIS 68268, at *5 (same).

[4] *Merced Cnty. Sheriff's Employee's Ass'n v. Cnty. of Merced* (1987) 188 Cal.App.3d 662, 670 (manifestation of mutual consent may be "'wholly or partly by written or spoken words . . . or by failure to act.'"); *Hicks*, 2006 U.S.Dist.LEXIS 68268, at *5 (quoting *Najd,* 294 F.3d at 1109) ("'[W]here circumstances . . . between the parties place the offeree under a duty to act or be bound, his[/her] silence or inactivity will constitute his[/her] assent.'").

[5] *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421-422; *Davis v. Nordstrom, Inc.* (9th Cir. 2014) 755 F.3d 1089; *Hicks*, 2006 U.S.Dist.LEXIS 68268, at *5; *Doubt v. NCR Corp.* (N.D.Cal. 2010) 2010 U.S.Dist.LEXIS 102484, *10-11; *Kruzich v. Chevron Corp.* (N.D.Cal. 2011) 2011 U.S.Dist.LEXIS 138140, *9-12.

[6] *Craig,* 84 Cal.App.4th at 420; *Davis, supra,* 755 F.3d 1089 (Continuation of employment following notice of modification of arbitration agreement constituted assent to modified arbitration agreement) (citing *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 620; *Asmus v. Pac. Bell* (2000) 23 Cal.4th 1, 15 ("Continuing to work after the policy termination and subsequent modification constituted acceptance of the new employment terms."); *24 Hour Fitness, Inc. v. Superior Ct.* (1998) 66 Cal.App.4th 1199, 1205, n. 1 (Continuation of employment after receipt of handbook constituted agreement to arbitrate); *Cione v. Foresters Equity Servs., Inc.* (1997) 58 Cal.App.4th 625, 635 (Accepting employment after being notified of arbitration in application form constituted agreement to arbitrate); *Brookwood v. Bank of Am.* (1996) 45 Cal.App.4th 1667, 1673-74; *Baker v. Aubry* (1989) 216 Cal.App.3d 1259, 1264-65.

[7] *Kruzich*, 2011 U.S.Dist.LEXIS 138140, at *9-12; *Asmus*, 23 Cal.4th at 15; *Doubt*, 2010 U.S.Dist.LEXIS 102484, at *9-14, *cf. Newberger v. Rifkind* (1972) 28 Cal.App.3d 1070, 1073 ("Consideration is inherent where stock options are granted to employees and the employee continues employment knowing of the options").

to the arbitration agreement and foreclose their right to seek redress in the courts, pay for up to $2,500 in legal fees or $500 in costs, and pay for the costs of the arbitration also is sufficient consideration. ([redacted] Decl., ¶ 14, Exs. A, B).[8]

In addition, the parties' arbitration agreement satisfies the California Supreme Court's criteria in *Armendariz* to ensure employee claims are decided fairly and efficiently: (1) provides for the selection of neutral arbitrators; (2) permits sufficient discovery; (3) requires a written award; (4) provides for the same relief that would be available in court; and (5) does not put unreasonable financial burdens on the employee.[9]

The Solutions InSTORE Plan provides for the selection of neutral arbitrator. AAA provides a panel of seven arbitrators and each party takes turns striking arbitrators from the list until one remains. If both parties are unhappy with the arbitrator selected, another panel can be requested. (*Id.* at Ex. A, pp. 8-9) California courts have recognized the fairness and neutrality of the AAA.[10]

Discovery Is Permitted. The arbitration agreement provides for the voluntary disclosure by both parties of documents relied on in support of the claims and defenses at issue, allows each of the parties to take three depositions and to propound 20 interrogatories (each of which can include a document request for documents relied on), and allows the parties to serve subpoenas. The arbitrator also has discretion to allow additional discovery. (*Id.* at ¶ 14(d), Ex. A, pp. 9-10)

Written Arbitration Award. The arbitration agreement requires a written award and allows the arbitrator the discretion to include specific findings of fact and conclusions of law. (*Id.* at ¶ 14(g), Ex. A, p. 14)

No Limitation on Individual Remedies. There is no limitation of remedies; the arbitrator may award the same relief a court could award. (*Id.* at ¶ 14(e), Ex. A, pp. 13-14)

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[8] *Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83, 118; *Najd*, 294 F.3d at 1108; *Slaughter v. Stewart Enters., Inc.*, (N.D.Cal. 2007) 2007 U.S.Dist.LEXIS 56732, *34.

[9] *Armendariz*, 24 Cal.4th at 120. Indeed, this same arbitration agreement has specifically been held to "satisf[y] all the *Armendariz* requirements." *Burnett*, 2011 U.S.Dist.LEXIS 116479, at *10-11; see also *Craig*, 84 Cal.App.4th at 422-23.

[10] *Lagatree v. Luce, Forward, Hamilton & Scripps* (1999) 74 Cal.App.4th 1105, 1130, n. 21; *Izzi v. Mesquite Country Club*, (1986) 186 Cal.App.3d 1309, 1318.

Employee Fee Is Minimal. The most an employee can be asked to pay is the lesser of one day's base pay or $125. [redacted] bears the rest of the arbitration costs other than incidental costs. (*Id.* at ¶ 14(a), Ex. A, p. 14)

Additional Features. The arbitration agreement does not restrict the applicable statute of limitations; any limits are set by the applicable law. (*Id.* at ¶ 14(e), Ex. A, p. 8) In addition, if the employee consults with or is represented by an attorney for the arbitration, [redacted] reimburses the employee's legal fees up to $2,500 over a continuously rolling 12-month period. (*Id.* at ¶ 14(c), Ex. A, p. 15) If the employee is not represented by an attorney, [redacted] will reimburse the employee for incidental costs up to $500 over the same rolling period. (*Id.*) If the plaintiff prevails, the arbitrator has the same power as a judge to order [redacted] to reimburse the plaintiff for any additional attorney's fees and costs incurred. (*Id.*)

C. [redacted] Waived Her Right to Bring a Representative PAGA Claim

Arbitration should be compelled "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.* (1960) 363 U.S. 574, 582-83, a*ccord Cione*, 58 Cal.App.4th at 642. The parties' arbitration agreement is very broad and, subject to certain exceptions, includes within its ambit "all employment-related legal disputes, controversies or claims arising out of, or relating to, employment or cessation of employment, whether arising under federal, state or local decisional or statutory law." ([redacted] Decl., ¶ 13, Ex. A, p. 6)

[redacted] claims under the California Labor Code constitute employment-related disputes within the meaning of the parties' arbitration agreement and must be compelled to arbitration. However, in the arbitration agreement, [redacted] agreed to pursue all claims only on an individual basis. The U.S. Supreme Court has made clear that representative action waivers in arbitration agreements are enforceable under the FAA. *Am. Express Co. v. Italian Colors Rest.* (2013) 133 S.Ct. 2304; *Concepcion, supra,* 131 S.Ct. 1740. Accordingly, [redacted] may not pursue any claims against [redacted] on a representative basis and instead may only pursue her claims on an individual basis in arbitration.

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Plaintiff will likely argue that PAGA waivers are unenforceable under *Iskanian.* This is incorrect for two reasons: (1) *Iskanian* is wrong in holding that PAGA claims are exempt from the FAA,[11] and thus that state law can prohibit the enforcement of mandatory waivers of representative PAGA claims; and (2) even were *Iskanian* correct, it does not apply to the [redacted] waiver because the [redacted] waiver allows employees to opt out and is thus not mandatory. *Iskanian, supra,* 59 Cal.4th 348.

First, *Iskanian* violates the fundamental rule the U.S. Supreme Court stated in *Concepcion* and has reiterated thereafter that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *Concepcion,* 131 S.Ct. at 1747; see *CompuCredit Corp., supra,* 132 S.Ct. 665 (applying *Concepcion* rule to federal statutory claims). *Iskanian* purports to prohibit outright the mandatory arbitration of representative PAGA claims, which cannot stand in the face of *Concepcion.*

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[11] It is impossible for PAGA to preempt the FAA because only Congress through *federal legislation* can override the FAA's requirement that courts "enforce agreements to arbitrate according to their terms." *CompuCredit Corp.*, 132 S.Ct. at 669. States have no power to preempt the FAA through state statutes. See *id.* (holding that the FAA compels enforcement of arbitration agreements according to their terms "unless the FAA's mandate has been 'overridden by a *contrary congressional command*'") (emphasis added).

The California Supreme Court tries to avoid the FAA by interpreting it as applying only to *private* disputes and characterizing PAGA claims as *public* disputes, and by asserting that *public* disputes are non-waivable. Both of these arguments are terminally flawed. First, to say that an employee suing his/her employer under PAGA to obtain money for himself/herself and other employees (and the government) is in no way a "private" dispute is spurious. PAGA gives employees no choice but to pursue PAGA claims "on behalf of themselves and other aggrieved employees." *Quevedo,* 798 F.Supp. at 1141 (recognizing that "the PAGA statute indicates that [an] employee can pursue claims on behalf of others only if he[/she] also pursues claims on behalf of himself[/herself]: the statute allows an aggrieved employee to bring a civil action 'on behalf of himself[/]herself and other current or former employees,' not on behalf of himself[/herself] or other employees") The employee is in charge of pursuing and litigating the PAGA action; the employee controls what allegations are in the complaint; the employee defines the group of employees whom he/she seeks to represent; and the employee can settle the PAGA claim without LWDA approval (but with binding effect on the state and the nonparty employees whom the PAGA plaintiff represents). Second, public disputes are waivable. *Iskanian* compares a PAGA claim to a *qui tam* action, but *qui tam* actions are waivable. See *U.S. ex rel. Hall v. Teledyne Wah Chang Albany* (9th Cir. 1997) 104 F.3d 230 (dismissing *qui tam* action because plaintiff had released future *qui tam* claims as part of a settlement agreement). In any event, the waiver by one employee of the right to bring a representative PAGA claim does not bar either the government or another employee from bringing such a claim.

Indeed, numerous federal district courts have held *Iskanian* conflicts with federal law and have refused to follow it.[12]

Second, even under *Iskanian's* logic, the [redacted] representative PAGA waiver here is permissible. *Iskanian* discusses the mandated waiver of claims; *i.e.*, a waiver to which an employee must agree as a condition of employment. See *Iskanian*, 59 Cal.4th at 383 ("It is contrary to public policy for an employment agreement to eliminate this choice altogether by **requiring** employees to waive the right to bring a PAGA action before any dispute arises") (emphasis added); at 387 ("Of course, **any employee is free to forgo the option of pursuing a PAGA action**") (emphasis added); and at 391 ("having concluded that CLS cannot **compel** the waiver of Iskanian's representative PAGA claim") (emphasis added). By contrast, as explained above, [redacted] entered into her arbitration agreement voluntarily. The Ninth Circuit Court of Appeals recently endorsed the same arbitration agreement and representative action waiver in *Johnmohammadi v.* [redacted], (9th Cir. 2014) 755 F.3d 1072, 1075:

> [redacted] did not require [the employee] to accept a class-action waiver **as a condition of employment**, as was true in *In re D.R. Horton* . . . . [redacted] gave her the option of participating in its dispute resolution program, which would require her to arbitrate any employment-related disputes on an individual basis.

[12] See, e.g., *Lucero v. Sears Holdings Mgmt. Corp.* (S.D.Cal. 2014) 2014 U.S.Dist.LEXIS 168782; *Velazquez v. Sears* (S.D.Cal. 2013) 2013 U.S.Dist.LEXIS 121400, *19-21 (PAGA claims arbitrable, enforcing agreement at issue in instant case); *Appelbaum v. AutoNation Inc.* (C.D.Cal. 2014) 2014 U.S.Dist.LEXIS 50588, *32 ("[W]aiver of representative PAGA claims in an arbitration agreement does not render the agreement unenforceable because concluding otherwise would undermine the FAA's policy of favoring arbitration of claims"); *Miguel,* 2013 U.S.Dist.LEXIS 16865 at *28 ("Because a rule prohibiting arbitration of PAGA claims would conflict with the FAA, PAGA claims are arbitrable"); *Morvant v. P.F. Chang's China Bistro, Inc.* (N.D.Cal. 2012) 870 F.Supp.2d 831, 846 ("[T]he Court must enforce the parties' [a]rbitration [a]greement even if this might prevent [p]laintiffs from acting as private attorneys general"); *Luchini v. Carmax, Inc.* (E.D.Cal. 2012) 2012 U.S.Dist.LEXIS 102198, *39 ("Like other courts, this Court views PAGA as an obstacle to enforcement of arbitration agreements governed by the FAA. As such, this Court is not prepared to preclude arbitration based on . . . PAGA claims."); *Coleman v. Jenny Craig, Inc.* (S.D.Cal. 2012) 2012 U.S.Dist.LEXIS 70789, *10 ("[T]he arbitration agreements are not unenforceable as unconscionable based on the inclusion of the class action waiver [and] [t]he waiver does not . . . violate PAGA . . . ."); *Grabowski v. C.H. Robinson Co.* (S.D.Cal. 2011) 817 F.Supp.2d 1159, 1181 (PAGA claim arbitrable and representative waiver enforceable); *Valle v. Lowe's HIW, Inc.* (N.D.Cal. 2011) 2011 U.S.Dist.LEXIS 93639, *14 ("To the extent that [p]laintiffs argue that no PAGA claim is arbitrable, the Court rejects this argument as unsupported by the law. Plaintiffs' PAGA claim is a state-law claim, and states may not exempt claims from the FAA."); *Nelson v. AT&T Mobility* (N.D.Cal. 2011) 2011 U.S.Dist.LEXIS 92290, *11 ("*Concepcion* preempts California law holding that a PAGA claim inarbitrable"); *Quevedo*, 798 F.Supp. at 1141(granting motion to compel arbitration because "PAGA claim is plainly arbitrable").

(Emphasis added). The voluntary nature of [redacted] agreement to arbitrate, as in *Johnmohammadi*, renders *Iskanian* inapplicable.[13]

D. [redacted] Has Prior Knowledge and Experience with Employer Arbitration Agreements

In another claim pending in this Court against a different retail employer, [redacted] makes allegations concerning the employer's arbitration program. *See* [redacted] *v. Neiman Marcus Group, Inc.*, San Francisco Superior Court Case No. CGC-07-466079. In the *Neiman Marcus* case, [redacted] alleged she worked for Neiman Marcus as a sales associate from 2002 to 2007. (See Request for Judicial Notice, Ex. 1 – Plaintiff's First Amended Complaint in *Neiman Marcus* case, ¶ 3)[14] [redacted] states in her First Amended Complaint that, in 2007, her employer enacted a new mandatory arbitration program. (*Id.* at ¶ 9) Plaintiff, however, did not wish to consent to the arbitration program, and "expressed to Defendant [Neiman Marcus] her opposition to its demand that she sign the [arbitration] agreement." (*Id.* at ¶ 13) Unlike the [redacted] agreement, the Neiman Marcus arbitration agreement was a condition of employment and if [redacted] continued to work there after July 15, 2007 she would, by virtue of continuing her employment, have assented to Neiman Marcus' arbitration agreement. (*Id.* at ¶¶ 12, 14) Because she did not want to participate in the arbitration plan and to avoid an argument that she assented

[13] Any assertion that PAGA claims are inherently not arbitrable would be preempted by the FAA. See, e.g., *Marmet Health Care Ctr., Inc. v. Brown* (2012) 132 S.Ct. 1201, 1203-04 (holding West Virginia's categorical prohibition of arbitration of personal injury or wrongful death claims against nursing homes is preempted by the FAA); *Concepcion*, 131 S.Ct. at 1747 ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA."); *Quevedo*, 798 F.Supp.2d at 1140-42 (holding representative action waiver in Solutions InSTORE arbitration agreement is enforceable with regard to the plaintiff's PAGA claim under FAA and pursuant to *Concepcion*); *Ortiz v. Hobby Lobby Stores, Inc.* (E.D.Cal. 2014) 2014 U.S.Dist.LEXIS 140552, *22-33 (rejecting *Iskanian* and holding representative action waivers are enforceable with regard to PAGA claims "because a rule stating otherwise is preempted by the FAA and *Concepcion*"); *Fardig v. Hobby Lobby Stores, Inc.* (C.D.Cal. 2014) 2014 U.S.Dist.LEXIS 139359, *6-11 (rejecting *Iskanian* and enforcing representative action waiver for PAGA claim). However, given that *Iskanian* does not apply as shown above, the Court need not decide this issue.

[14] An allegation in the complaint is a binding judicial admission. See *Am. Title Ins. Co. v. Lacelaw Corp.* (9th Cir. 1988) 861 F.2d 224, 226 ("A statement in a complaint, answer or pretrial order is a judicial admission"); *Sicor Ltd. v. Cetus Corp.* (9th Cir. 1995) 51 F.3d 848, 859-60 ("[A] statement in a complaint may serve as a judicial admission"); see also *Hall v. United States* (N.D.Cal. 1970) 314 F.Supp. 1135, 1138, n. 3 ("It is a basic rule that statements made in a [c]omplaint may be admitted against the pleader as evidence in the form of judicial admissions").

by continuing to work, [redacted] stopped working at Neiman Marcus prior to the July 15, 2007 deadline. (*Id.* at ¶ 14)

Here, Plaintiff did not have to agree to arbitrate her employment-related disputes with [redacted] as a condition of continued employment. [redacted] had the opportunity to opt out of the arbitration component of [redacted] Solution InSTORE dispute resolution program. [redacted] chose not to opt out. At the time she began her employment with [redacted] and made the decision not to opt out of arbitration, [redacted] had already quit her job at Neiman Marcus to avoid arbitration. Indeed, when she joined [redacted] and elected to participate in [redacted] arbitration program, [redacted] was represented by her current counsel and still actively engaged with her lawsuit against Neiman Marcus, which raised issues nearly identical to those in the instant case against [redacted] claims that were brought in court, because she had quit Neiman Marcus. Simply put, [redacted] is not your run-of-the-mill plaintiff. When she elected not to opt out of [redacted] arbitration agreement, she understood the ramifications and her options for avoiding such an agreement. Plaintiff elected not to opt out of arbitration, clearly evidencing her intent to arbitrate her claims.

E. Courts Have Consistently Compelled Solutions InSTORE Program Arbitration

Courts in California and across the United States have enforced the Solutions InSTORE arbitration agreement, and an order compelling arbitration in this case will be consistent with those decisions. (For copies of these decisions, see Request for Judicial Notice, Exs. 2-18.)

IV. CONCLUSION

Defendant [redacted] respectfully requests that the Court (1) compel the arbitration of [redacted] individual claims; and (2) stay this litigation as required by the Federal Arbitration Act ("FAA").

Dated: January 12, 2015

JACKSON LEWIS P.C.

By: /s/ David S. Brasdshaw
David S. Bradshaw

Attorneys for Defendant
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

[redacted] an individual, Plaintiff, v. [redacted] an Ohio Corporation, Defendant.	Case No. [redacted] **COMPENDIUM OF EVIDENCE IN SUPPORT OF DEFENDANT [redacted]'S MOTION TO COMPEL ARBITRATION** Date: March 17, 2015 Time: 9:30 a.m. Dept: 302 Judge: Hon. Ernest H. Goldsmith Complaint Filed: 8.15.14 Trial Date: None Set

Defendant [redacted] submits the following evidence in support of its Motion to Compel Arbitration:

Exhibit 1: Declaration of [redacted] in Support of Defendant's Motion to Compel Arbitration

Exhibit A: Solutions InSTORE Plan Document, effective January 1, 2007

Exhibit B: Solutions InSTORE Brochure (with attached Opt-Out Election Form and Plan Document)

Exhibit C: Solutions InStore Opt-Out Election Form

Exhibit D: Solutions InSTORE Open Door Poster

Exhibit E: Solutions InSTORE New Hire Acknowledgement form with electronic signature of Plaintiff [redacted]

Exhibit 2: Declaration [redacted] in Support of Defendant's Motion to Compel Arbitration

Exhibit A: Solutions InSTORE New Hire Acknowledgement online form

Exhibit B: Screenshot of Exemplar Online Forms Login Screen

Exhibit C: Screenshot of Exemplar Online Forms Main Menu Screen

Exhibit D: Screenshot of Exemplar Electronic Signature Dialogue Box

Exhibit E: Screenshot of Exemplar of Dialogue Box acknowledging electronic signature was saved successfully

Exhibit F: Screenshot of Exemplar of Online Forms Main Menu reflecting change in status of online forms

Exhibit G: Solutions InSTORE New Hire Acknowledgement form with electronic signature of Plaintiff [redacted]

Exhibit H: Online forms acknowledged, completed and/or electronically signed by Plaintiff [redacted]

Dated: January 12, 2015

JACKSON LEWIS P.C.

By: s/ David S. Bradshaw
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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

[redacted] an individual, Plaintiff, vs. [redacted] an Ohio corporation, Defendants.	[redacted] DECLARATION OF [redacted] IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL ARBITRATION Date Filed: August 15, 2014 Trial Date: None Set

I, [redacted] declare under penalty of perjury and in accordance with the laws of the State of California and the United States of America, the following:

1. I submit this declaration in support of Defendant [redacted] Motion to Compel Arbitration. I am over the age of eighteen years and have personal knowledge of the facts set forth in this declaration. If called as a witness, I can and would competently testify to these facts.

2. I am employed as Director of Employee Relations, Solutions InSTORE, for [redacted] Inc., which was formerly known as Federated Department Stores, Inc. [redacted] is the parent company of wholly-owned subsidiary Bloomingdale's, Inc., which operates the store where Plaintiff [redacted] is employed.

3. In my capacity as Director, I am responsible for the management and administration of Macy's Solutions InSTORE Early Dispute Resolution Program. I supervise the Solutions InSTORE Program and the employees whose sole job is to administer the Solutions InSTORE Program.

The Solutions InSTORE Program

4. In 2003, at great effort and expense, Macy's, Inc., then known as Federated Department Stores, Inc., developed and implemented Solutions InSTORE, which is a comprehensive early dispute resolution program. The purpose of the Solutions InSTORE Program is to surface and resolve disputes as early and fairly as possible. With certain exceptions not pertinent here, the Solutions InSTORE program applies to employees of all subsidiaries and divisions of Macy's, Inc., including Bloomingdale's.

5. To support the Solutions InSTORE Program, [redacted] established an Office of Solutions InSTORE within its Employee Relations Department in Cincinnati, Ohio.

6. Currently, the Office of Solutions InSTORE is staffed with employees whose only responsibilities are the administration of the Solutions InSTORE Program. This staff reports to me. Their responsibilities, under my direct supervision, include: (a) managing associate calls to the toll-free Solutions InSTORE phone number and email address; (b) conducting investigations; (c) managing administration associated with program execution; and (d) training professionals throughout the company on topics such as facilitating Step 3 Peer Review Panels, managing investigations, and facilitating early resolution. The Office of Solutions InSTORE has its own dedicated budget from which the program is administered.

7. The Solutions InSTORE Program contains four separate steps for resolution of work-related problems. By accepting and continuing employment with [redacted] all employees are covered by Steps 1 through 4 of the Solutions InSTORE Program—unless the employee elects not to participate in the arbitration portion of the program—Step 4. The four steps are explained in depth in the Solutions InSTORE Program Plan Document. The Solutions InSTORE Program (including the initial Plan Document) was first rolled out in Fall 2003, with an effective date of January 1, 2004, to

all then-current, non-unionized employees of all Macy's-related companies, including those employed at [redacted] and facilities located in California. The Plan Document was subsequently revised twice, once with an effective date of January 1, 2007, and most recently in 2014, with the current version of the Solutions InSTORE Program effective June 1, 2014. This declaration will discuss the version of the Solutions InSTORE Program effective January 1, 2007, since that is the version applicable to Plaintiff and the one that will be discussed in this motion. A true and correct copy of the 2007 Plan Document is attached to this declaration as **Exhibit A**.

8. A summary of the Solutions InSTORE Program's four steps are as follows:

Step 1: The Solutions InSTORE Program begins with "Open Door." Employees are encouraged to bring their concerns to a supervisor or local management team member (e.g., Store or Facility Manager, Human Resources Representative) for discussion and resolution.

Step 2: In Step 2, the employee submits a written request for review to the Manager of Step 2 claims where it is assigned to a Human Resources professional for investigation and reviewed with an Associate Relations Vice President or Senior Vice President of Human Resources who was not previously involved in the underlying decision.

Step 3: The Step 3 request is directed to the Office of Solutions InSTORE in Cincinnati, Ohio. If the dispute involves a claim(s) related to layoffs, harassment, discrimination, reduction in force, or other legally protected rights, a trained professional investigates it thoroughly and objectively. Other disputes, including disputes over termination and final warnings, may be submitted to a Peer Review Panel at the employee's option. In either case, the dispute is decided by the Peer Review Panel or the Office of Solutions InSTORE and not by local/divisional management.

Step 4: The fourth and final step of the Solutions InSTORE Program is binding arbitration, which is administered by the American Arbitration Association. Arbitration under the Solutions InSTORE Program is a voluntary term and condition of employment in that all employees are given the opportunity to opt out of arbitration by completing a one-page form

and mailing it to the Office of Solutions InSTORE in Ohio within a prescribed time period. If the employee does not submit the opt-out form within the prescribed time period, the employee agrees to arbitration as a term and condition of continued employment. Employees may agree to employment with or without Step 4-Arbitration. Also, while employees are encouraged to go through Steps 1 through 3 before proceeding to Step 4, there is no administrative or other requirement that they do so. In the past, former and current employees have chosen not to go through Steps 1 through 3 before proceeding to Step 4-Arbitration.

9. Employees hired after the implementation of the Solutions InSTORE Program are given thirty (30) days from their date of hire to opt out of Step 4-Arbitration.

10. Under the terms of the Solutions InSTORE Program, Macy's is bound by the decisions made at any of the first three steps of the Solutions InSTORE Program – even those not in Macy's favor. In contrast, the employee is free to appeal any decision made at these steps. The employee drives the process.

11. An employee's decision to accept or opt out of binding arbitration has no effect on her employment. [redacted] and each of its affiliated companies strictly prohibit retaliation against employees who use, or opt out of, the Solutions InSTORE Program. Such retaliation would seriously undermine the Solutions InSTORE Program's core purpose, which is to surface and resolve disputes quickly and fairly. Macy's communicates this no retaliation policy to its employees through the Solutions InSTORE Program information given to employees.

12. The employee's choice whether to opt out of Step 4-Arbitration is confidential. Macy's intentionally designed the opt-out procedure so that local management is unaware of an employee's election. All employees across the country are asked to mail the opt-out Election Forms to Ohio so that no one at the [redacted] stores or other work locations has access to individual election information, including returned forms. Only a select few company employees have access to the returned opt-out Election Forms and the portion of the electronic database containing an employee's opt-out status. An employee's opt-out status is accessed only when that information becomes relevant to handling an employee's claim.

13. If an employee elects to be covered by Step 4-Arbitration, the arbitration agreement covers most eligible employment-related claims asserted either by the employee or by [redacted] whether the claims arise under federal, state, or local law. **Ex. A, Plan Document, pp. 6-7.** Certain claims are not subject to arbitration, such as those brought under an employee pension or benefit plan, those for state employment insurance, or those under the National Labor Relations Act. **Ex. A pp. 6-7.** If the employee chooses to be covered by arbitration, Macy's in turn agrees and is required to resolve any employment-related disputes with the employee by arbitration as well. **Ex. A p. 6.**

14. Other benefits of Step 4-Arbitration of the Solutions InSTORE Program include:

(a) the employee bears minimal costs equal to one day's wage, not to exceed a maximum of $125 for a filing fee, and may pay nothing if the arbitrator so orders **(Ex. A pp. 14-15);**

(b) Macy's will have an attorney present at the arbitration only if the employee decides to have an attorney present at the arbitration **(Ex. A p. 9);**

(c) [redacted] will reimburse the employee's legal fees up to $2,500 each year (calculated on a continuously rolling 12-month period), and if the employee elects not to be represented by counsel, [redacted] will reimburse the employee for incidental costs up to $500 (also calculated on a rolling 12-month period) **(Ex. A p. 15);**

(d) discovery is permitted and includes voluntary document disclosures by both parties, three depositions per side, twenty interrogatories (each of which may include a document request), and a provision allowing the arbitrator to award more discovery (Ex. A pp. 9-10);

(e) the arbitrator, jointly selected by both Macy's and the employee, has the same power and authority as a judge to grant any ultimate relief under applicable law, including attorney's fees and costs; and the applicable statutes of limitation are the same as those that would apply in court **(Ex. A pp. 8-9, 13-14);**

(f) the arbitration is administered by AAA under the Solutions InSTORE Program Plan Document rules. If necessary, the AAA employment arbitration rules may be used to supplement the Plan Document rules **(Ex. A p. 6);** and

(g) the Solutions InSTORE Program also requires an arbitrator to submit a written decision specifying any remedies found to be appropriate. The arbitrator also may include findings of fact and conclusions of law in any decision, **(Ex. A p. 14)**.

15. The Office of Solutions InSTORE has regular mail collection procedures designed to ensure that all opt-out Election Forms mailed to the Ohio address as instructed are recorded and accounted for. [redacted] Credit and Customer Services, Inc. ("MCCS"), a subsidiary of Macy's, Inc., receives the Election Forms, opens them, and date-stamps them. After reviewing for completeness, MCCS records the employee's opt-out status into the PeopleSoft database, a database used by the Office of Solutions InSTORE to record the opt-out status. The electronic information on the PeopleSoft database is maintained in the ordinary course of business and is accessed and used regularly by me and my team in the Office of Solutions InSTORE in operating the Solutions InSTORE Program.

16. The PeopleSoft Human Resource System is a software database that includes employment information such as an employee's identification number, address, job code, title, location, dates of employment, and other items. Macy's customarily relies on the PeopleSoft Human Resource System and the information contained therein. Access to the area of the PeopleSoft Human Resource System in which the employee's opt-out election is recorded is limited to viewing only by the staff of the Office of Solutions InSTORE and to a very limited number of individuals responsible for data input and system maintenance.

17. MCCS sends the Election Forms to the Office of Solutions InSTORE where they are stored in file cabinets and organized by the Social Security number of the employees who have chosen to opt out of Step 4-Arbitration. These records are maintained in the ordinary course of business and are customarily relied upon by me and the Office of Solutions InSTORE personnel in the performance of our job duties.

[redacted] Opportunity to Opt-Out of Arbitration

18. By consulting the PeopleSoft human resources computer system, I learned that [redacted] employment began on June 28, 2011 and she continues to work for Bloomingdale's.

19. [redacted] and each of its subsidiaries and divisions take multiple measures to ensure their newly hired employees (i.e., those hired after the Solutions InSTORE Program was initially rolled out in 2003, hereafter "new hires") are aware of the Solutions InSTORE Program and are aware that, if they do not opt out of Step 4-Arbitration within thirty (30) days of their hire, they agree to arbitration. For example, each of the following educates employees about the Solutions InSTORE Program:

- the Solutions InSTORE Plan Document (**Ex. A**);
- the Solutions InSTORE Brochure (**Ex. B**);
- the Solutions InSTORE opt-out Election Form (**Ex. C**);
- the Solutions InSTORE poster used in Macy's stores/facilities in 2011 (**Ex. D**);
- the Solutions InSTORE website (www.employeeconnection.net/solutionsinstore); and
- the Solutions InSTORE New Hire Acknowledgement (along with Ms. [redacted] electronic signature acknowledging receipt of same on June 28, 2011) (**Ex. E**).

20. [redacted] created a descriptive and explanatory Brochure regarding the Solutions InSTORE Program for dissemination to all new hires. This Brochure details the Solutions InSTORE Program. The Brochure uses both graphics (such as charts and tables) and multiple pages of text to explain each step of the Solutions InSTORE Program in detail. A true and correct copy of the Solutions InSTORE Program Brochure provided to Ms. Tanguilig is attached as **Exhibit B.**

21. The Solutions InSTORE Brochure contains: (1) a summary of certain provisions from the Plan Document, (2) a copy of the Plan Document, and (3) an opt-out Election Form. The Brochure emphasizes, among other things, that the arbitration process is binding, covers most disputes related to the employee's employment, and is a waiver of the employee's right to a civil action and jury trial. The Brochure explains that while employees are bound by all four steps of the

Program, including Step 4-Arbitration, the employee has an opportunity to opt out of Step 4. Thus, the employee has a choice about whether to be covered by Step 4-Arbitration. *See* **Ex. B.**

22. If a new hire wishes to opt out of Step 4-Arbitration, all he or she has to do is complete an opt-out Election Form and mail it back to the Office of Solutions InSTORE in Ohio within thirty (30) days of his or her date of hire. A true and correct copy of the opt-out Election Form is attached as **Exhibit C.** (Exhibit C has the watermark "Exhibit" for purposes of this declaration only.) The Election Form is inserted in the middle of the Solutions InSTORE Brochure. The Election Form notifies the employee of his or her right to opt out of Step 4-Arbitration and explains that in order to opt out the employee must complete the Election Form and mail it back to the Office of Solutions InSTORE in Ohio. *See* **Ex. C.**

23. The Office of Solutions InSTORE also gives each [redacted] region/division, including [redacted]'s stores, copies of posters that explain the Solutions InSTORE Program's 4-step process. The posters are for the stores and facilities to display in an area frequented by employees. A true and correct (although not to scale) copy of the poster provided to the regions/divisions for display at the time [redacted] was hired in June 2011 is attached as **Exhibit D.**

24. Additionally, employees have access to a website – which can be accessed by the employee on any computer with an internet connection – that provides employees with information about their employment, including, among other things, corporate policies/procedures, benefits, wage information, and work schedules. The website, www.employeeconnection.net, also provides information about the Solutions InSTORE Program. Similar to the Brochure, the Solutions InSTORE website uses both graphics and text to explain each step of the Solutions InSTORE Program in detail. The website also provides employees with access to the entire Solutions InSTORE Plan Document.

25. Upon receipt of the Solutions InSTORE Brochure during the orientation process, the newly hired employee is required to physically or electronically sign a "Solutions InSTORE New Hire Acknowledgement." By signing, the employee acknowledges that he or she has received the Brochure, understands that he or she has thirty (30) days to decide whether to opt out of Step 4-

Arbitration, and can obtain further information about the program from a variety of sources, such as the Solutions InSTORE website. To electronically sign the New Hire Acknowledgment, Ms. [redacted] is prompted to enter her own Social Security Number, date of birth, and zip code. A true and correct copy of [redacted] Solutions InSTORE New Hire Acknowledgment and confirmation of her electronic signature are attached as **Exhibit E.** Note that portions of Exhibit E have been redacted to remove confidential personal information.

26. I personally reviewed the PeopleSoft Human Resource database to determine whether [redacted] returned an Election Form within 30 days of her hire on June 28, 2011. According to the database, [redacted] never returned an Election Form. I also personally reviewed the appropriate areas of the correct file cabinet (based on [redacted]), and found that there was no Election Form returned by [redacted].

[redacted] Never Contacted the Office of Solutions InSTORE

27. The Office of Solutions InSTORE maintains a toll-free phone number for employees to use if they have any questions concerning the Solutions InSTORE Program. In addition, all employee contacts with the Office of Solutions InSTORE, whether by phone, voicemail, e-mail, or letter, are tracked and managed in an online recordkeeping system. [redacted] had contacted the Office of Solutions InSTORE at any time during her employment concerning her inclusion in Step 4-Arbitration or for any other reason, that contact would have been logged in our records.

28. I reviewed the database to determine whether Ms. [redacted] ever contacted the Office of Solutions InSTORE. My review revealed that Ms. [redacted] never contacted the Office of Solutions InSTORE.

29. The attached records are kept by [redacted] in the regular course of business, and all of the attached records were prepared and compiled by [redacted] personnel in the ordinary course of business at or near the time of the acts, conditions, or events recorded. The attached copies are true and correct copies.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 5th day of January, 2015, at Cincinnati, Ohio.

[redacted]

EXHIBIT A

PLAN DOCUMENT

EARLY DISPUTE RESOLUTION

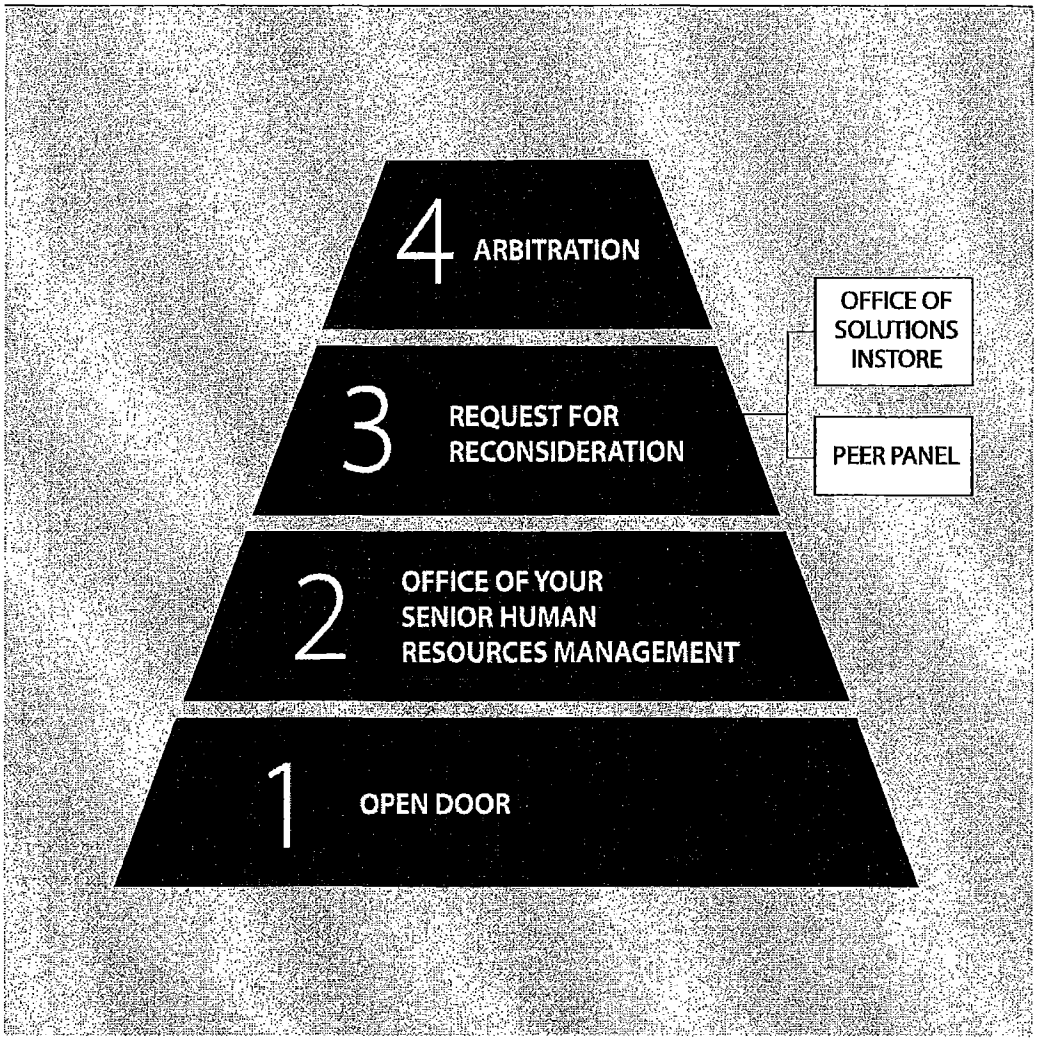
RULES AND PROCEDURES

January 1, 2007

If you need any accommodation to help you read and understand this Solutions InSTORE Plan Document, please call the Office of Solutions InSTORE at 1-866-285-6689.

Si le gustaría tener este Documento del Plan en español, favor de llamar el numero 1-866-285-6689.

Solutions Early Resolution → Positive Workplace
In•STORE



Federated Department Stores, Inc. ("Federated") and its subsidiaries and divisions (the "Company") care about their people. We know that from time to time Associates can have problems at work. And even routine differences can get bigger when there are no resources to help solve them.

In 2004, the Company set out to find a more effective way to resolve workplace disputes. We wanted a way that would benefit everyone involved. Our open door policy was a good place to start. Over the years, the Company has had a policy to help Associates handle problems by working with supervisors and/or Human Resources. To make this policy even better known and improve its effectiveness, the Company added new features. Together with Open Door they became our early dispute resolution program: Solutions InSTORE.

We are convinced that a full internal review of differences is the quickest and most productive way to resolve these disputes. It also maintains good working relationships and avoids unnecessary confrontations. So, Open Door **(Step 1)** continues to be the foundation of our program. It must be used before taking the next step.

If you are not satisfied with the result, you can request to have your issue reviewed by the Office of Senior Human Resources Management **(Step 2)**. The Senior Vice President or another Human Resources executive who was not involved in the Open Door process will review your issue. They'll get back to you in writing. Steps 1 and 2 are available for any disputes relating to your employment with the Company.

If you are not satisfied with the result at Step 2, and you believe your situation involves legally protected rights, you can make a Request for Reconsideration **(Step 3)**. Step 3 gives you the option, depending on the nature of your claim, of two methods to continue to seek resolution. One method is Peer Review. A panel of your peers decides the outcome of your dispute. The other method is review by a representative from The Office of Solutions InSTORE. This office is located in Federated's Employee Relations Department in Cincinnati.

In those relatively rare situations that, for whatever reason, your dispute cannot be resolved at Step 3 and you wish to pursue it further, Solutions InSTORE provides for a private, professional way to resolve it outside the company. You can request Arbitration **(Step 4)**. This process involves an Arbitrator. The Arbitrator is a professional, neutral third-party selected by both you and the Company. After a hearing, the Arbitrator renders a final decision. The decision is binding on both the Company and you. Nothing in the Solutions InSTORE program, however, prevents you from filing, at any time, a charge or complaint with a government administrative agency like the EEOC, for example.

All Associates agree to be covered by Step 4 – Arbitration by accepting or continuing employment with the Company after the Effective Date. Associates are given the option to exclude themselves from Arbitration by completing an election form within the prescribed time frame. Until and unless an Associate elects to be excluded from arbitration within the prescribed time frame, the Associate is covered by Step 4 – Arbitration.

The following pages explain how Solutions InSTORE works.

Step 1 – Open Door

The Company's open door policy encourages Associates to try to resolve any problems at work with their immediate supervisors. If the Associate is unsatisfied with the immediate supervisor's response or needs to talk to someone other than the supervisor, the Associate may take the problem to the next higher level of supervision. Open Door also provides that the Associate may contact the Human Resources department for advice or assistance at any time.

Step 2 – Review by the Office of Senior Human Resources Management

If the Associate is not satisfied with the result of Open Door (Step 1), the Associate may go to Step 2. To do that, the Associate files a written request for review with the Office of Senior Human Resources Management within thirty (30) days of the Step 1 decision. The complaint is referred to an appropriate HR executive, one who was not involved at Step 1, who will conduct an impartial investigation. A written decision is then issued generally within forty-five (45) days of receiving the complaint. Along with the decision are instructions for pursuing Step 3 if the Associate is not satisfied with the results of Step 2.

Steps 1 and 2 are available for any disputes relating to your employment at the Company. Steps 3 and 4 are available only for claims involving legally protected rights. "Legally protected rights" means claims the Associate could raise in a court or before an administrative agency.

Step 3 – Request for Reconsideration

For claims involving legally protected rights,if the Associate is not satisfied with the results of Step 2, the Associate may go to Step 3. To do that, the Associate contacts the Office of Solutions InSTORE within thirty (30) days of the Step 2 decision to file a written Request for Reconsideration. Step 3 involves two features the Associate may consider:

1 – Peer Review

Peer Review is available if the Associate's claim involves:

- A final warning or the final phase of written commitment to change or improve a performance issue, or
- Termination of employment,

and does not involve issues claiming harassment, discrimination, a reduction in force, layoff, or alleged statutory violations. If the Associate chooses Peer Review, a representative from The Office of Solutions InSTORE gives the Associate contact information for a division facilitator. The Associate has ten (10) days to contact the facilitator. The facilitator arranges for a panel proceeding. A volunteer panel is assembled to review the Associate's complaint and render a decision. This panel consists of peers from the Associate's level, one (1) from the next level and one (1) non-voting facilitator to manage the process. Numbers of panelists may vary by division, region or location. Panels always consist of at least three (3) voting members. The panel is assembled to review the Associate's complaint. A response is given within five (5) days of the conclusion of the panel proceedings.

A decision of the Peer Review panel that upholds the Associate's claim is final and binding on the Company. If the panel denies the Associate's claim, the Company will let the Associate know the procedures for continuing on to Step 4.

2 – Review by the Office of Solutions InSTORE

This feature is available for all claims involving legally protected rights. If the Associate chooses review by the Office of Solutions InSTORE, the Solutions InSTORE Program Manager will send to the Associate a confirmation that the complaint was received. A representative of the Office of Solutions InSTORE then conducts an investigation and provides the Associate with a decision in writing. The decision is generally provided within forty-five (45) days of receiving the complaint. A decision that upholds the Associate's claim is final and binding on the Company. But a decision denying the Associate's claim in any way may be challenged by requesting arbitration under Step 4. If the claim is denied, the company will let the Associate know the procedures for continuing on to Step 4.

Step 4 – Arbitration Rules and Procedures

Article 1 – Individuals Covered

This Plan Document applies, as of the Effective Date provided in Article 4, to the following individuals, provided that they are not covered by a collective bargaining agreement with Federated:

a. Newly Hired Associates

All Associates hired by Federated with a first day of employment on or after January 1, 2007.

b. Covered May Associates

Associates whose employment with Federated relates to the merger of The MAY Department Stores Company with and into Federated Department Stores, Inc. on August 30, 2005 (the "Merger"), as defined in i and ii below:

i. Former MAY Associates continuously employed by Federated Retail Holdings, Inc., formerly known as The MAY Department Stores Company, between August 30, 2005 and January 1, 2007

ii. Any Associate hired with a first day of employment before January 1, 2007 by a Federated division or subsidiary or operating unit that was an affiliate of MAY before the Merger (e.g., a store, a distribution center, a call center, etc.)

"Federated" means any division or subsidiary or operating unit or entity related to Federated Department Stores Inc.

All Associates are automatically covered by all 4 steps of the program by taking or continuing a job with the Company. That means that all Associates agree, as a condition of employment, to arbitrate any and all disputes, including statutory and other claims, not resolved at Step 3. However, Arbitration is a voluntary condition of employment. Associates are given the option of excluding themselves from Step 4 arbitration within a prescribed time frame. Issues at Step 4 are decided by a professional from the American Arbitration Association in an arbitration process, rather than in a court process. Arbitration thus replaces any right you might have to go to court and try your claims before a jury. You are covered by Step 4 unless and until you exercise the option to exclude yourself from arbitration. Whether you choose to remain covered by arbitration or to exclude yourself has no negative effect on your employment.

Any Associate who experiences a break in service with the Company of sixty (60) days or less, or who transfers from one subsidiary, division or affiliated Federated Company to another, remains covered by Arbitration, unless the Associate previously excluded himself during the prescribed time period. If the Associate becomes re-employed with the Company following a break in service greater than sixty (60) days, the Associate is treated as a new hire and is given the opportunity to elect to be excluded from arbitration during the prescribed time period.

Article 2 – Claims Subject to or Excluded from Arbitration

Except as otherwise limited, all employment-related legal disputes, controversies or claims arising out of, or relating to, employment or cessation of employment, whether arising under federal, state or local decisional or statutory law ("Employment-Related Claims"), shall be settled exclusively by final and binding arbitration. Arbitration is administered by the American Arbitration Association ("AAA") under these Solutions InSTORE Early Dispute Resolution Rules and Procedures and the employment arbitration portion of the AAA's Employment Arbitration Rules and Mediation Procedures. Arbitration is held before a neutral, third-party Arbitrator. The Arbitrator is selected in accordance with these Solutions InSTORE Early Dispute Resolution Rules and Procedures. If there are any differences between the Solutions InSTORE Early Dispute Resolution Rules and Procedures and the employment arbitration portion of the AAA's Employment Arbitration Rules and Mediation Procedures, the Solutions InSTORE Early Dispute Resolution Rules and Procedures shall apply.

Arbitration shall apply to any and all such disputes, controversies or claims whether asserted by the Associate against the Company and/or against any employee, officer, director or alleged agent of the Company. Arbitration shall also apply to any and all such civil disputes, controversies or claims asserted by the Company against the Associate.

All unasserted employment-related claims as of January 1, 2007 arising under federal, state or local statutory or common law, shall be subject to arbitration. Merely by way of example, Employment-Related Claims include, but are not limited to, claims arising under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), 42 U.S.C. § 1981, including amendments to all the foregoing statutes, the Employee Polygraph Protection Act, state discrimination statutes, state statutes, and/or common law regulating employment termination, misappropriation, breach of the duty of loyalty, the law of contract or the law of tort; including, but not limited to, claims for malicious

prosecution, wrongful discharge, wrongful arrest/wrongful imprisonment, intentional/negligent infliction of emotional distress or defamation.

Claims by Associates that are required to be processed under a different procedure pursuant to the terms of an employee pension plan or employee benefit plan shall not be subject to arbitration under Step 4. Claims by Associates for state employment insurance (e.g., unemployment compensation, workers' compensation, worker disability compensation) or under the National Labor Relations Act are also not subject to Arbitration under Step 4. Statutory or common law claims made outside of the state employment insurance system alleging that the Company retaliated or discriminated against an Associate for filing a state employment insurance claim, however, shall be subject to arbitration.

Nothing in these Solutions InSTORE Early Dispute Resolution Rules and Procedures prohibits an Associate from filing at any time, a charge or complaint with a government agency such as the EEOC. However, upon receipt of a right to sue letter or similar administrative determination, the Associate's claim becomes subject to arbitration as defined herein.

Article 3 – Dismissal/Stay of Court Proceeding

By agreeing to arbitration, the Associate and the Company agree to resolve through arbitration all claims described in or contemplated by Article 2 above. This means that neither the Associate nor the Company can file a civil lawsuit in court against the other party relating to such claims. If a party files a lawsuit in court to resolve claims subject to arbitration, both agree that the court shall dismiss the lawsuit and require the claim to be resolved through the Solutions InSTORE program.

If a party files a lawsuit in court involving claims that are, and other claims that are not, subject to arbitration under Step 4, such party shall request the court to stay litigation of the nonarbitrable claims and require that arbitration take place with respect to those claims subject to arbitration, assuming the earlier steps have been exhausted. The Arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any later court lawsuit on any nonarbitrable claims.

Article 4 – Effective Date

As to any Individuals Covered (as defined in Article 1), the Solutions InSTORE program is effective January 1, 2007.

Article 5 – Time Limit to Initiate Arbitration

Arbitration must be initiated in accordance with the time limits contained in the applicable law's statute of limitations. The period of time elapsed during which the Associate pursued his or her claims under Steps 1-3 of this Program is added on to the applicable limitations period.

Article 6 – Commencement of Arbitration

To initiate arbitration, the Associate or Company must give written notice to the other party and/or person who is alleged to be liable in the dispute ("Claimant"). Notice to the Company must be given to the Office of Solutions InSTORE.

Notice to the Associate must be given by mailing to the Associate's last known home address.

The notice shall include a statement of the nature of the claim together with a brief description of the relevant facts, the remedies including any amount of damages being sought, and the address which the Claimant will use for the purpose of the arbitration.

Within thirty (30) days after notice of a dispute is given, the other party shall give its response ("Respondent"). The response shall state all available defenses, a brief description of relevant facts and any related counterclaims then known.

Within thirty (30) days after such counterclaims are given, the Claimant shall give Respondent a brief statement of the claimant's defenses to and relevant facts relating to the counterclaims.

Claims and counterclaims may be amended before selection of the arbitrator and thereafter with the arbitrator's consent. Notices of defenses or replies to amended claims or counterclaims shall be delivered to the other party within the thirty (30) days after the amendment.

Article 7 – Selection of an Arbitrator

Both the Company and the Associate shall participate equally in the selection of an Arbitrator to decide the arbitration. After receiving and/or filing an Arbitration Request Form, the Solutions InSTORE Program Manager shall ask the American Arbitration Association to provide the Company and the Associate a panel of seven (7) neutral arbitrators with experience deciding employment disputes.

The Company and the Associate then shall have the opportunity to review the background of the arbitrators by examining the materials provided by the American Arbitration Association. Within seven (7) calendar days after the panel composition is received, the Associate and the Company shall take turns striking unacceptable arbitrators from the panel until only one remains. The Associate and the Company will inform the American Arbitration Association of the remaining arbitrator who will decide the dispute. However, if both parties agree that the remaining arbitrator is unacceptable, a second panel will be requested from the American Arbitration Association and the selection process will begin again. If both parties agree no one on the second panel is acceptable, either party may request the American Arbitration Association to simply appoint an Arbitrator who was not on either panel.

Article 8 – Time and Place of Arbitration

The arbitration hearing shall be held at a location within fifty (50) miles of the Associate's last place of employment with the Company, unless the parties agree otherwise. The Parties and the Arbitrator shall make every effort to see that the arbitration is completed, and a decision rendered, as soon as possible. There shall be no extensions of time or delays of an arbitration hearing except in cases where both Parties consent to the extension or delay, or where the Arbitrator finds such a delay or extension necessary to resolve a discovery dispute or other matter relevant to the arbitration.

Article 9 – Right to Representation

Both the Associate and the Company shall have the right to be represented by an attorney. If the Associate elects not to be represented by an attorney during the arbitration proceedings, the Company will not have an attorney present during the arbitration proceedings.

Article 10 – Discovery

a. Initial Disclosure

Within fourteen (14) calendar days following the appointment of an Arbitrator, the Parties shall provide each other with copies of all documents upon which they rely in support of their claims or defenses. However, the parties need not provide privileged documents that are protected from disclosure because they involve attorney-client, doctor-patient or other legally privileged or protected communications or materials. Throughout the discovery phase, each party shall provide the other party with any and all such documents relevant to any claim or defense.

Upon written request, the Associate shall be entitled to a copy of all documents (except privileged documents as described above) in the Associate's "PERSONNEL FILE."

b. Other Discovery

i. Interrogatories/Document Requests

Each party may propound one (1) set of twenty (20) interrogatories (including subparts) to the other party. Interrogatories are written questions asked by one party to the other, the recipient must answer under oath. Such interrogatories may include a request for all documents upon which the responding party relies in support of its answers to the interrogatories. Answers to interrogatories must be served within twenty-one (21) calendar days of receipt of the interrogatories.

ii. Depositions

A deposition is a statement under oath that is given by one party in response to specific questions from the other party. It is usually recorded or transcribed by a court reporter. Each party shall be entitled to take the deposition of up to three (3) relevant individuals of the party's choosing. he party taking the deposition shall be responsible for all associated costs, such as the cost of a court reporter and the cost of a transcript.

iii. Additional Discovery

Upon the request of any party and a showing of appropriate justification, the Arbitrator may permit additional relevant discovery, if the Arbitrator finds that such additional discovery is not overly burdensome, and will not unduly delay the conclusion of the arbitration.

c. Discovery Disputes

The Arbitrator shall decide all disputes related to discovery. Such decisions shall be final and binding on the parties. In ruling on discovery disputes, the arbitrator need not follow but may consult the discovery rules contained in the Federal Rules of Civil Procedure.

d. Time for Completion of Discovery

All discovery must be completed within ninety (90) calendar days after the selection of the Arbitrator, except for good cause shown as determined by the Arbitrator. In order to expedite the arbitration, the parties may initiate discovery prior to the appointment of the Arbitrator.

Article 11 – Hearing Procedure

a. Witnesses

Witnesses shall testify under oath, and the Arbitrator shall afford each party a sufficient opportunity to examine its own witnesses and cross-examine witnesses of the other party. Either party may issue subpoenas compelling the attendance of any other person necessary for the issuing party to prove its case.

i. Subpoenas

A *subpoena* is a command to an individual to appear at a certain place and time and give testimony. A *subpoena* also may require that the individual bring documents when he or she gives testimony. To the extent authorized by law, the Arbitrator shall have the authority to enforce and/or cancel such subpoenas. *Subpoenas* must be issued no less than ten (10) calendar days before the beginning of an arbitration hearing or deposition.

The party issuing the *subpoena* shall be responsible for the fees and expenses associated with the issuance and enforcement of the subpoena, and with the attendance of the subpoenaed witness at the arbitration hearing.

ii. Sequestration

The Arbitrator shall ensure that all witnesses who testify at the arbitration are not influenced by the testimony of other witnesses. Accordingly, unless the Arbitrator finds cause to proceed in a different fashion, the Arbitrator shall sequester all witnesses who will testify at the arbitration, however, the Arbitrator shall permit the Associate involved in the arbitration and the Company's designated representative to remain throughout the arbitration, even though they may or may not testify at the hearing.

b. Evidence

The parties may offer evidence that is relevant and material to the dispute and shall produce any and all non-privileged evidence that the Arbitrator deems necessary to a determination of the dispute. The Arbitrator need not specifically follow the Federal Rules of Evidence, although they may be consulted to resolve questions regarding the admissibility of particular matters.

c. Burden of Proof

Unless the applicable law provides otherwise, the party requesting arbitration or the party filing a counterclaim has the burden of proving a claim or claims by a preponderance of the evidence. To prevail, the party bringing the arbitration must prove that the other's conduct was a violation of applicable law.

d. Briefing

Each party shall have the opportunity to submit one (1) dispositive motion, one (1) pre-hearing brief, and one (1) post-hearing brief, which is a written statement of facts and law, in support of its position. Submission of such briefs is not required, however, briefs shall be typed and shall be limited in length to twenty (20) double-spaced pages.

e. Transcription

The parties may arrange for transcription of the arbitration by a certified reporter. The party requesting transcription shall pay for the cost of transcription.

f. Consolidation

i. Claims

The Arbitrator shall have the power to hear as many claims as a Claimant may have consistent with Article 2 of these Solutions InSTORE Early Dispute Resolution Rules and Procedures.

The Arbitrator may hear additional claims that were not mentioned in the Arbitration Request Form. To add claims, the Claimant must notify the other party at least thirty (30) calendar days prior to a scheduled arbitration. The additional claims must be timely, under the applicable law, as of the date on which they are added. The other party must not be prejudiced in its defense by such addition.

ii. Parties

The Arbitrator shall not consolidate claims of different Associates into one (1) proceeding. Nor shall the Arbitrator have the power to hear an arbitration as a class or collective action. (A class or collective action involves representative members of a large group, who claim to share a common interest, seeking relief on behalf of the group).

g. Confidentiality

All aspects of an arbitration pursuant to these Solutions InSTORE Early Dispute Resolution Rules and Procedures, including the hearing and recording of the proceeding, shall be confidential and shall not be open to the public. The only exceptions are : (i) to the extent both parties agree otherwise in writing; (ii) as may be appropriate in any subsequent proceeding between the parties: or (iii) as may otherwise be appropriate in response to a governmental agency, legal process, or as required by law.

All settlement negotiations, mediations, and any results shall be confidential.

Article 12 – Substantive Choice of Law

The Arbitrator shall apply the substantive law, including the conflicts of law, of the state in which the Associate is or was employed. For claims or defenses arising under or governed by federal law, the Arbitrator shall follow the substantive law as set forth by the United States Supreme Court. If there is no controlling United States Supreme Court authority, the Arbitrator shall follow the substantive law that would be applied by the United States Court of Appeals and the United States District Court for the District in which the Associate is or was employed.

Article 13 – Arbitrator Authority

The Arbitrator shall conduct the arbitration. The arbitrator shall have the authority to render a decision in accordance with these Solutions InSTORE Early Dispute Resolution Rules and Procedures, and in a manner designed to promote rapid and fair resolution of disputes.

The Arbitrator's authority shall be limited to deciding the case submitted by the party bringing the arbitration. Therefore, no decision by any Arbitrator shall serve as precedent in other arbitrations.

The arbitration procedure contained herein does not alter the Associate's employment status. The status remains alterable at the discretion of the Company and/or terminable at any time, at the will of either the Associate or the Company, with or without cause or prior notice. Accordingly, the Arbitrator shall have no authority to alter the Associate's employment status by, for example, requiring that the Company have "cause" to discipline or discharge an Associate. Nor may the arbitrator otherwise change the terms and conditions of employment of an Associate unless required by federal, state or local law, or as a remedy for a violation of applicable law by the Company with respect to the Associate.

The Arbitrator shall have the power to award sanctions against a party for such party's failure to comply with these Solutions InSTORE Early Dispute Resolution Rules and Procedures or with an order of the Arbitrator. These sanctions may include assessment of costs or prohibitions of evidence. If justified by a party's wanton or willful disregard of these Solutions InSTORE Early Dispute Resolution Rules and Procedures, the Arbitrator may award the sanction of an adverse ruling in the arbitration against the party who has failed to comply.

Article 14 – Award

Within thirty (30) calendar days after the later of the close of the hearing or the receipt of post-hearing briefs, if any, the Arbitrator shall mail to the parties a written decision. The decision shall specify appropriate remedies, if any, if a violation of law is found. If the Associate's claim arises under federal or state statutory law, the award should include findings of fact and conclusions of law; otherwise, the inclusion of such findings and conclusion is at the Arbitrator's discretion. The parties to an arbitration shall be provided with a copy of the Arbitrator's award.

Article 15 – Fees and Expenses

a. Costs Other Than Attorney Fees

i. Definitions

Costs of an arbitration include the daily or hourly fees and expenses (including travel) of the Arbitrator who decides the case, filing or administrative fees charged by the AAA, the cost of a reporter who transcribes the proceeding, and expenses of renting a room in which the arbitration is held. Incidental costs include such items as photocopying or the costs of producing witnesses or proof.

ii. Filing Fee/Costs of Arbitration

An Associate initiating arbitration shall pay the cost of arbitration up to a maximum of the least of one (1) day's base pay or One Hundred Twenty-Five Dollars ($125), whichever is less. Upon filing the request for arbitration, the Associate shall remit such fee. The Company shall pay the remainder of the costs of the arbitration. The Company shall pay the entire filing fee should it initiate arbitration. Except as provided below, each party shall pay its own incidental costs, including attorney's fees.

The AAA has developed guidelines for waiving administrative fees. This Plan is subject to those guidelines.

b. Reimbursement for Legal Fees or Costs

The program does not infringe on either party's right to consult with an attorney at any time. In fact, the Company will reimburse an Associate for this legal consultation and/or representation during Step 4 of the program, at a maximum benefit of Two Thousand Five Hundred Dollars ($2,500) per Associate in a rolling twelve (12) month period. If the Associate is not represented by counsel, the Company will reimburse an Associate for incidental costs up to a maximum of Five Hundred Dollars ($500) per Associate in a rolling twelve (12) month period. The Associate will not be entitled to such reimbursement by the Company if the Arbitrator determines the arbitration claim by the Associate was frivolously filed. Any reimbursement to the Associate will occur following the conclusion of the proceedings upon submission of the Associate's bills for costs of legal services or incidental costs.

c. Shifting of Costs

If the Associate prevails in arbitration, whether or not monetary damages or remedies are awarded, the filing fee shall be refunded to the Associate. The Arbitrator may (based on the facts and circumstances) also require that the Company pay the Associate's share of the costs of arbitration and incidental costs.

Article 16 – Remedies and Damages

Upon a finding that a party has sustained its burden of persuasion in establishing a violation of applicable law, the Arbitrator shall have the same power and authority as would a judge to grant any relief, including costs and attorney's fees, that a court could grant, in conformance with applicable principles of common, decisional and statutory law in the relevant jurisdiction.

Article 17 – Settlement

The parties may settle their dispute at any time without involvement of the Arbitrator.

Article 18 – Enforceability

The arbitration agreement, the arbitration proceedings, and any award rendered pursuant to them shall be interpreted under, enforceable in accordance with, and subject to the Federal Arbitration Act, 9 U.S.C. § 1, et seq. regardless of the state in which the arbitration is held or the substantive law applied in the arbitration. If for any reason the Federal Arbitration Act is inapplicable to enforce this agreement, the Parties agree it will be enforced under the governing state arbitration statute(s).

Article 19 – Appeal Rights

The decision rendered by the Arbitrator shall be final and binding as to both the Associate and the Company. Either party may appeal the Arbitrator's decision to a court in accordance with the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq.

Article 20 – Severability/Conflict with Law

In the event that any of these Solutions InSTORE Early Dispute Resolution Rules and Procedures are held to be unlawful or unenforceable, the conflicting rule or procedure shall be modified automatically to comply with applicable law.

In the event of an automatic modification with respect to a particular rule or procedure, the remainder of these rules and procedures shall not be affected. An automatic modification of one of these rules or procedures shall apply only in regard to the particular jurisdiction and dispute in which the rule or procedure was determined to be in conflict with applicable law. In all other jurisdictions and disputes, these Solutions InSTORE Early Dispute Resolution Rules and Procedures shall apply in full force and effect.

Article 21 – Cancellation or Modification of Dispute Resolution Rules and Procedures or Program

The Company may alter these Solutions InSTORE Early Dispute Resolution Rules and Procedures or cancel the program in its entirety upon giving thirty (30) days written notice to Associates. If such notice is not provided to an Associate, the Solutions InSTORE Early Dispute Resolution Rules and Procedures that covered the Associate prior to the modification or cancellation shall govern.

Article 22 – Change in Control of Federated

A change in control of the Company shall nullify and cancel the Associate's agreement to be covered by Step 4 – Arbitration, respecting any claims the Associate may have arising after such change. A change in control will be deemed to have occurred if:

i. Federated is merged, consolidated, or reorganized into or with another corporation or other legal entity unaffiliated with Federated, resulting in less than a majority of the combined voting power of the then-outstanding securities of the surviving or resulting corporation or entity immediately after such transaction being held in the aggregate by those who were entitled to vote in the election of directors of Federated (the "Voting Stock") immediately prior to such transaction; or

ii. Federated sells or otherwise transfers substantially all of its assets to another corporation or other legal entity and, as a result of such sale or transfer, less than a majority of the combined voting power of the then-outstanding securities of such other corporation or entity immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock of Federated immediately prior to such sale or transfer.

Article 23 – Sale of Subsidiary or Division or Operating Unit

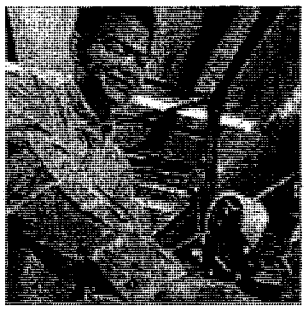
Should Federated sell a subsidiary or division or operating unit of a subsidiary (through the sale of stock or substantially all of its assets) and such transaction includes transferring Associates to a third-party, a transferring Associate's agreement to arbitration under this program shall remain in effect as to any Employment-Related Claims arising prior to such sale but only as to claims against Federated or its subsidiaries or divisions and shall be null and void as to any such third-party.

Office of Solutions InSTORE
Federated Department Stores
7 West Seventh Street
Cincinnati, OH 45202
Toll Free Number: 866-285-6689
Email: solutions.instore@fds.com

EXHIBIT B

Solutions In•STORE

Early Resolution → Positive Workplace



early dispute resolution

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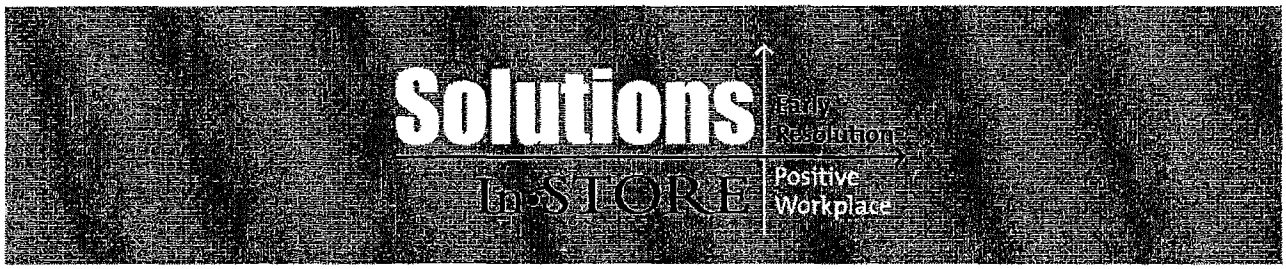


NOTICE OF AN ADMINISTRATIVE CHANGE TO STEP 2 PROCESS ONLY

Due to the My Macy's reorganization, the Step 2 – Review by the Office of Senior Human Resources Management and the divisional SVP of Human Resources no longer exist at the stores (exception: [redacted] and Support entities). As a result, effective May 26, 2009, all Step 2 requests for review will be managed by Corporate Associate Relations. Depending on whether you work at a store or a support division, your Step 2 claim will be referred to a Regional Vice President of Associate Relations or to the Senior Vice President of Human Resources. This executive, or a designee who was not involved at Step 1, will conduct an impartial investigation. All references in the Solutions InSTORE Plan Document, brochures, website or other materials to the Office of Senior Human Resources Management generally and the SVP of Human Resources with regard to Macy's stores should be replaced with the Office of Senior Human Resources Executive. In all other regards, the Step 2 process remains unchanged.

Effective May 26, 2009, your written Step 2 claims should be mailed to:
Macy's
Manager of Step 2 Claims
P.O. Box 5355
Cincinnati, OH 45201-5355

Dear Associate:

Welcome to [redacted]

I am excited that you have joined our team and am looking forward to the expertise you will bring to your new position and the innovative ideas you will contribute to our Company.

Here at [redacted] we are committed to providing a positive work environment – a workplace that people enjoy and are proud to come to each and every day. At Macy's, we actively look for ways to encourage a positive atmosphere – to create a workplace that our associates can benefit from…one that is friendly, fun and **fair.**

To achieve this, we have embraced an "Open Door" culture. Simply put, *we are committed* to **listening** to you. You are encouraged to share what is on your mind with your management team - many of our best ideas have come from our associates. The "Open Door" for our associates not only includes the opportunity to share unique perspectives, but also work-related concerns, should they arise.

"Open Door" is not only a culture at Macy's, it is the first step in a Program called **Solutions InSTORE.** Solutions InSTORE is the process we use to get work-related concerns resolved. Our associates enjoy the opportunity to speak openly with their managers and expect and deserve thoughtful and complete responses. Solutions InSTORE offers a structured way to resolve any concern, large or small.

What makes **Solutions InSTORE** so outstanding? Our employees have told us that they appreciate the opportunity to resolve issues **quickly** - and in a fair manner.

Please spend the time it takes to review this Brochure about **Solutions InSTORE.** I'm confident that the more you learn about it, the more you'll agree – it's a smart way to resolve concerns and a valuable benefit for all of us at Macy's.

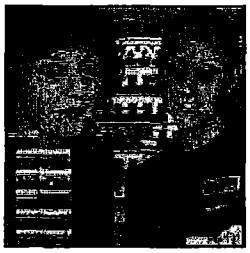
So, welcome to Macy's … welcome to your new work environment …
Welcome to **Solutions InSTORE.**

Sincerely,

Terry J. Lundgren

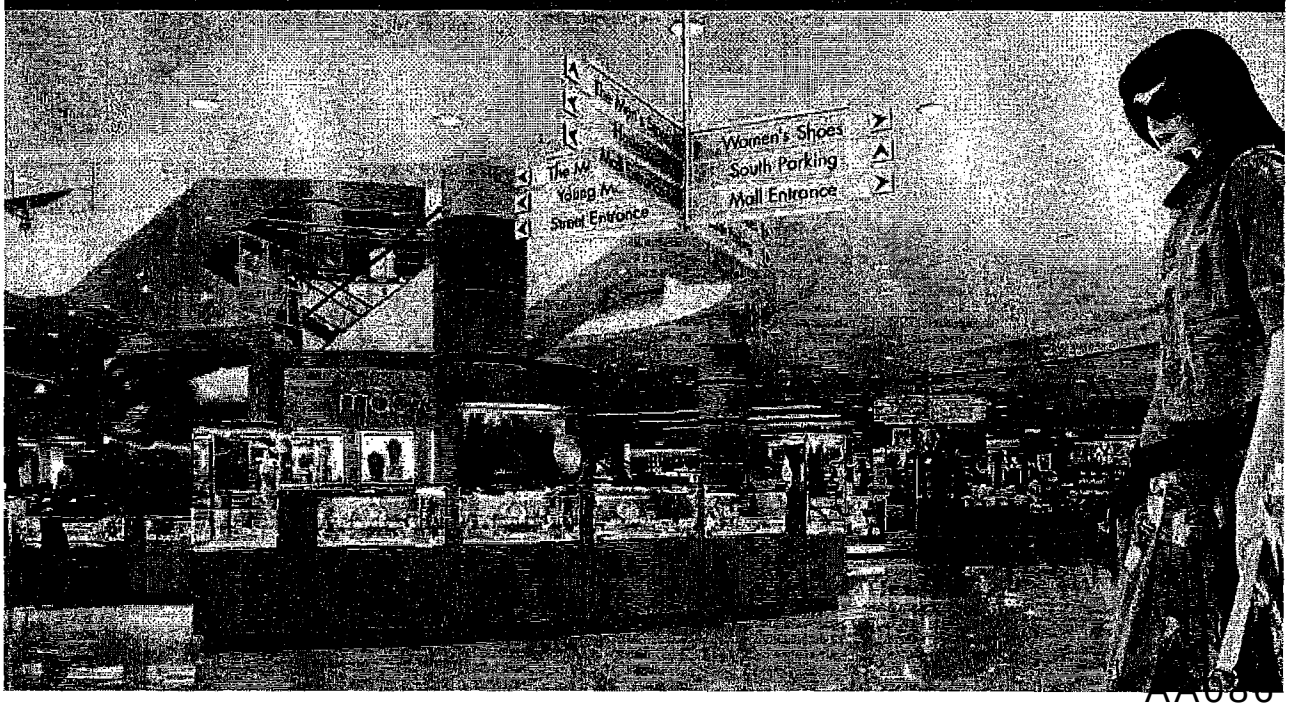
macy's inc

Early Resolution, Positive Work Place

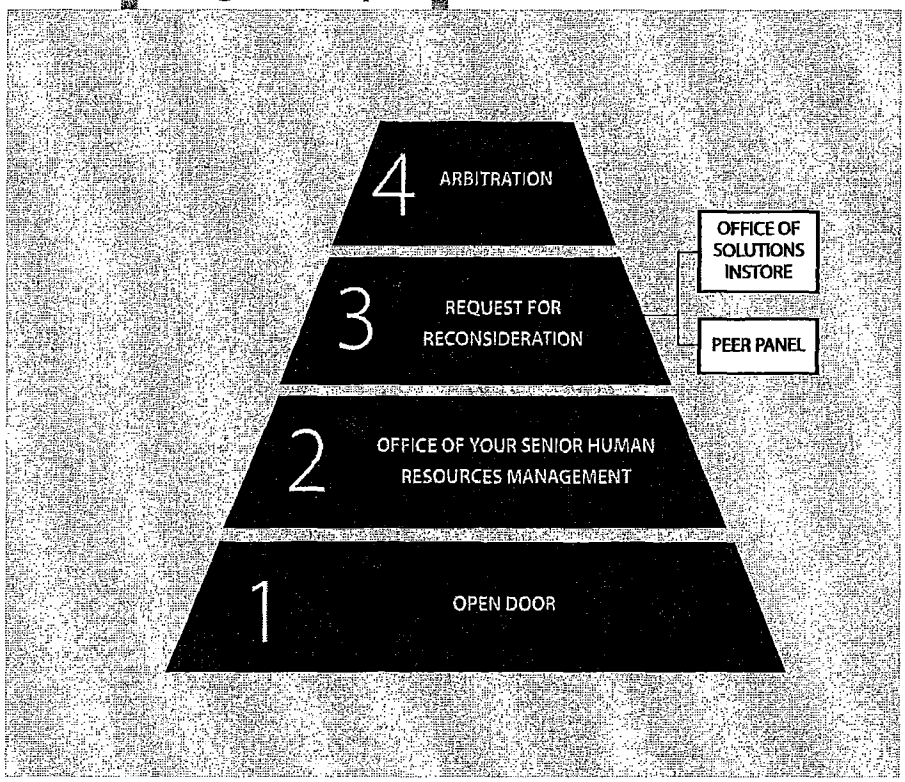


At Macy's, we believe in building strong work relationships. These relationships allow us to learn from each other, give us a sense of community and greatly contribute to our job satisfaction. But just like at home, we need to take care of our relationships. That means when we have disagreements at work, we give them our immediate attention. Left unresolved, these conflicts can damage relationships, distract us from doing our jobs and occasionally even lead to costly and upsetting litigation. That's why we are proud to share with you our Early Dispute Resolution program. This program, called Solutions InSTORE, is a four-step process that gives us a positive way to solve workplace disputes. It provides additional steps, as needed, to encourage problem solving at the earliest possible level.

Solutions InSTORE



Program Steps:



Step 1: Open Door – an informal way to discuss your problem with your supervisor or any other member of your local management team (e.g., Store or Facility Manager, HR Representative).

Step 2: Office of Your Divisional Senior Human Resources Management – a written complaint sent to your division's most senior Human Resources office where it is reviewed by an HR professional who was not previously involved in the Open Door decision.

Step 3: Request for Reconsideration – a formal review of eligible claims using one of the following two features *(both are impartial and independent of your division management):*

- **Peer Panel:** A panel of people in similar positions to you ("peers") within your division, or
- **Office of Solutions InSTORE:** An executive who works with the Solutions InSTORE office, located in Cincinnati, Ohio.

Step 4: Arbitration – A formal review of your complaint, similar to a court proceeding, but decided by an independent "arbitrator" who is approved by the American Arbitration Association (AAA), and is not an employee of our Company.

KEY POINTS:

1: *Steps 1 and 2 are available for all kinds of workplace disputes, big or small (see page 6 for examples).*

2: *You drive the process – the Company is bound by the decision at every step, but you decide whether you are satisfied or would like to proceed to the next step.*

3: *Only the more serious kinds of disputes (that would otherwise be considered in a court of law), such as wrongful termination, can be advanced to Steps 3 or 4.*

4: *If you take your dispute all the way to Step 4, you and the Company are bound by the decision of the independent arbitrator.*

5: *Respect for your privacy and confidentiality are key features of this program. With Solutions InSTORE, you can be certain that the issue will remain confidential. Only those with a business need to know will be involved.*

For the Benefit of All

With Solutions InSTORE, we have a program that reinforces the value of each Associate as well as the importance of really listening to each other and understanding our different points of view. As always, we want to provide the very Best Work Environment. When we designed the program originally, we talked to many leading companies that have introduced successful ways to resolve workplace disputes. We learned that there are many time-tested programs out there and each one is a little different. Finally, we studied our own employee population and designed the steps that we thought would work best for our diverse workforce.

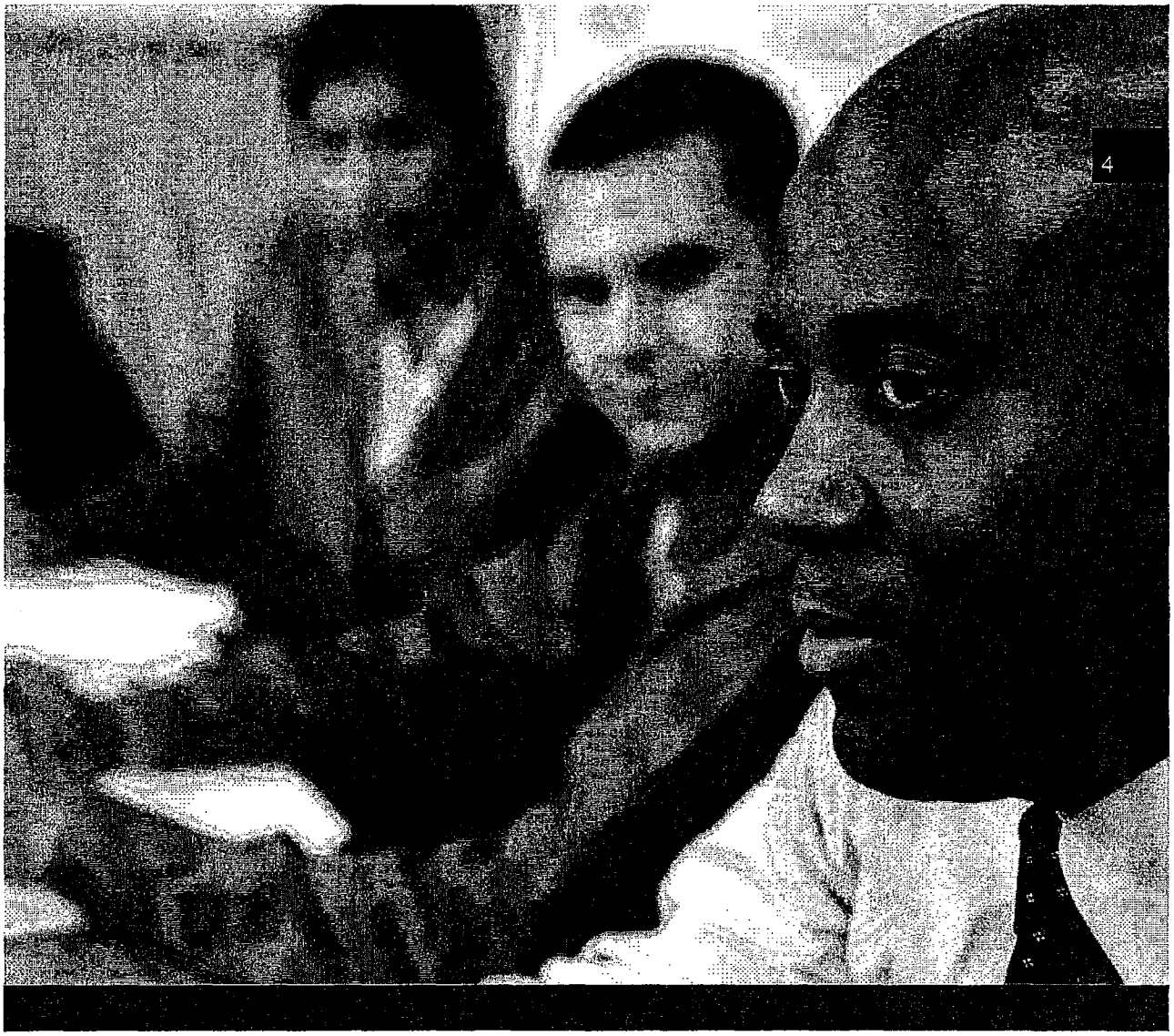
For a company of our size, we are fortunate to have very few employment-related lawsuits. However, in those rare instances when one does occur, it is almost always disruptive, time-consuming and costly for everyone involved. We would much rather see our Company's resources used more productively on programs that benefit all our Associates.

HERE'S WHY THIS SPECIAL PROGRAM BENEFITS YOU, OUR COMPANY AND OUR CUSTOMERS:

IT'S FAIR.
Solutions InSTORE offers you multiple opportunities to have your dispute heard by a third party – some are close to your situation and others are more removed. You decide whether to accept the outcome of each step or move to the next one – as long as it's appropriate for your type of dispute.

IT PRESERVES WORK RELATIONSHIPS.
By creating a way for everyone to work out differences respectfully, Solutions InSTORE lets you build solid relationships and grow in your job.

IT KEEPS YOU MORE SATISFIED WITH YOUR WORK EXPERIENCE.
Hopefully, if you have good work relationships with your manager and coworkers and the opportunity to learn new skills, you will continue to stay happily employed in our Company.



IT'S QUICK.
There are timing guidelines at each step so disputes shouldn't drag on. You always get answers to your questions, and the process is designed to move your dispute along quickly.

IT'S LESS EXPENSIVE FOR YOU AND THE COMPANY.
Even if your dispute ends up in arbitration, you pay only a small percentage of the arbitration costs. And, if the arbitrator rules in your favor, the Company pays 100% of all arbitration costs. There is even legal financial assistance available to you from the Company. For both you and the Company, Solutions InSTORE is much less costly than arguing a case in court.

IT'S CONFIDENTIAL.
Everyone involved in Solutions InSTORE is committed to keeping all disputes confidential. This means we involve only those with a business need to know.

IT'S FREE OF RETALIATION.
Retaliation, in any form, is something the Company will not tolerate. You can count on it!

Step One:

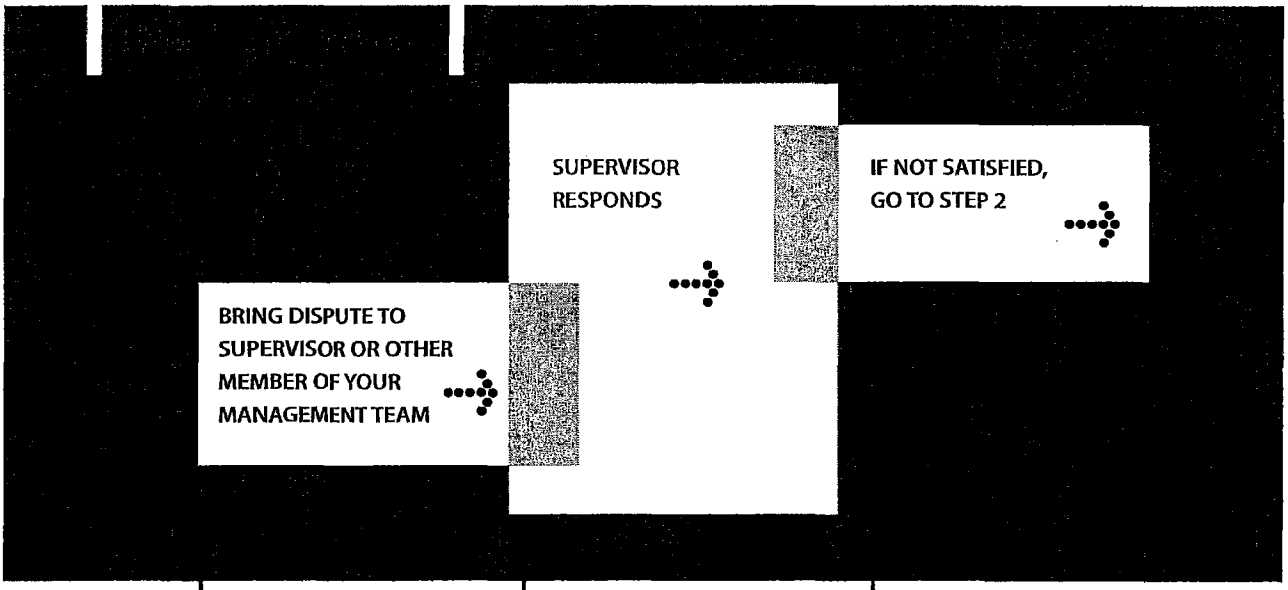
Open Door

Open Door is the starting point for most disputes. In the majority of cases, it will also be the ending point – where your concerns are discussed and resolved to your satisfaction.

Under the Open Door, you are encouraged to discuss your situation with your supervisor since he or she usually knows you the best and can most likely resolve your concern. If you feel more comfortable, you can discuss your concern with another member of local management (for example, another member of your management team like your Store or Facility Manager or your Human Resources Representative).

Open Door is usually successful because we are problem-solving at a very early stage and you have access to supervisors and managers who know you and understand your issues.

If this process does not work for you, for whatever reason, you may proceed to Step 2 by submitting a written request to the office of your Senior Human Resources Management in your division's corporate office.



You bring your dispute to your supervisor or to a member of your local Human Resources or management team

Supervisor/Human Resources management responds verbally back to you in a reasonable time frame

If you are not satisfied with the response, you can go to Step 2

Step Two:

Office of Your Senior Human Resources Management

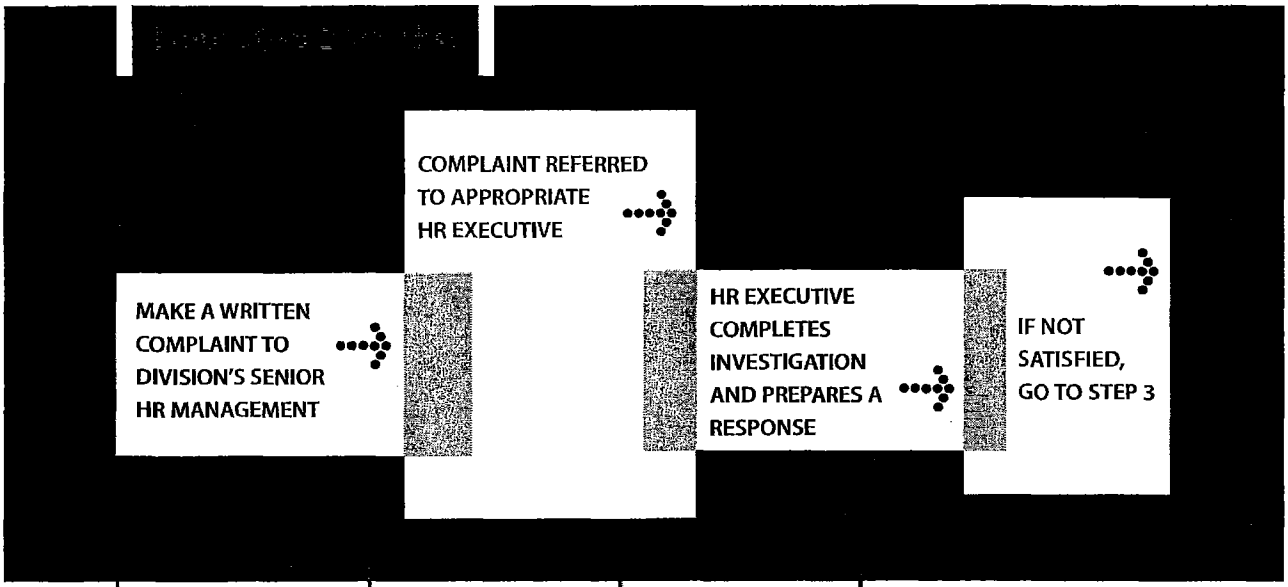
KEY POINTS:

What's Covered Under Steps 1 & 2 of Solutions InSTORE

All kinds of issues – big or small – including:

- *Disputes about vacation time or absences from work*
- *Pay disputes and performance issues*
- *Personality conflicts that affect job performance*
- *Concerns about discrimination or sexual harassment*
- *Performance concerns and termination*

Step 2 still takes place within your division but it is more formal than Open Door. In this step, your dispute is referred to your division's most Senior Human Resources professionals for a thorough review.



You make a written complaint to your division's Senior Human Resources Management within 30 days of the Open Door decision

Your complaint is referred to an appropriate Human Resources executive who was not involved in your Step 1 decision

A Human Resources executive completes the investigation and prepares a response to you

If you are not satisfied, you can proceed to Step 3 as long as your dispute could be considered in a court of law, for example, in cases of perceived discrimination or harassment

Step Three:

Request for Reconsideration

KEY POINTS:

Employees who volunteer and meet the criteria to become a member of the peer panelist team for their location or region, receive specialized training when they are randomly selected to serve on a panel. This training gives panelists confidence in their role and prepares them with the skills needed to make the most appropriate decision when determining a response to a claim.

If you're not satisfied with the results of Step 2 and your claim could otherwise be considered in a court of law, you may proceed to Step 3 — Request for Reconsideration. In this step, you have two very different features to consider for your claim. Call the Solutions InSTORE office to make arrangements for your request to be handled by the most appropriate process, either:

REVIEW BY A PEER PANEL **OR** REVIEW BY THE OFFICE OF SOLUTIONS INSTORE

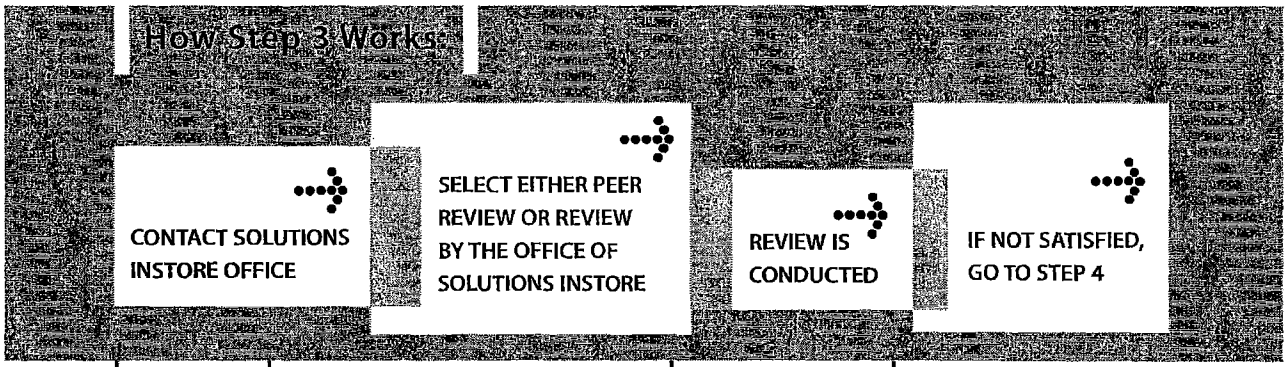
REVIEW BY A PEER PANEL

The Peer Review process gives you a chance to take your case to a panel of people just like you. Because peer panelists are generally from your location or region and have similar jobs, they are uniquely qualified to understand your dispute. The panel usually includes three volunteer panelists (two at your level and one at the next higher level) and one facilitator who helps direct the process, but does not vote on the outcome of the claim. The Company is so confident that these Associates will look at your situation with care and use good judgment that it is willing to abide by the panel's decision.

The Peer Panel process is available for most disputes related to:

- **an Associate's final phase of written commitment to change or improve a performance issue, or**
- **termination of employment**

Exceptions include claims related to layoffs, harassment, and discrimination – claims that would benefit from a review by a trained professional. Step 3 claims like these are directed for review by an executive of the Office of Solutions InSTORE.



You contact the Solutions InSTORE office	With the help of the Solutions InSTORE office, determine which Step 3 feature, Peer Review or Review by the Office of Solutions InSTORE is appropriate for your claim	The review is conducted either by a Peer Panel or by the Office of Solutions InSTORE	While the Company is bound by the decision, if you are not satisfied with the results of this process, you can proceed to Step 4

KEY POINTS:

1: *Any type of dispute that could be heard in a court of law, including if you feel you were overlooked for a promotion or discriminated against because of race or age; or if you believe you've been the subject of sexual harassment, or terminated improperly is appropriate for Steps 3 and 4.*

2: *The staff of the Office of Solutions InSTORE, (which is located in Cincinnati, Ohio) is available to assist you should your claim proceed to Steps 3 and 4 of the Solutions InSTORE program. When calling, you can speak confidentially to a professional who can answer questions or provide information about the program and how it works.*

REVIEW BY OFFICE OF SOLUTIONS INSTORE

If at Step 3 you prefer your claim to be heard by an employee relations professional, or if it falls outside of what can be reviewed by a Peer Panel, you may take it to the Macy's Corporate Office of Solutions InSTORE. The program manager of Solutions InSTORE is responsible for conducting a thorough investigation, gathering information from you and other witnesses involved in your situation. You will receive a decision in writing within a reasonable time frame from the day your complaint is received, generally within 45 days. If you are not satisfied with the decision, you may proceed to Step 4.

MORE ABOUT THE OFFICE OF SOLUTIONS INSTORE

When deciding to file a claim at Step 3, you will speak to a member of the Office of Solutions InSTORE who will help you decide which Step 3 feature(s) applies to your claim. Once you determine between the Peer Panel or Review by the Office of Solutions InSTORE, a member of the Solutions InSTORE staff will guide you through the process to ensure your claim receives the proper review.

If you receive a decision for your Step 3 claim that you are still not satisfied with, the Solutions InSTORE staff will also help guide you through Step 4 – Arbitration.

For assistance with a Step 3 claim, you can contact the Office of Solutions InSTORE by calling 1-866-285-6689.

Step Four:

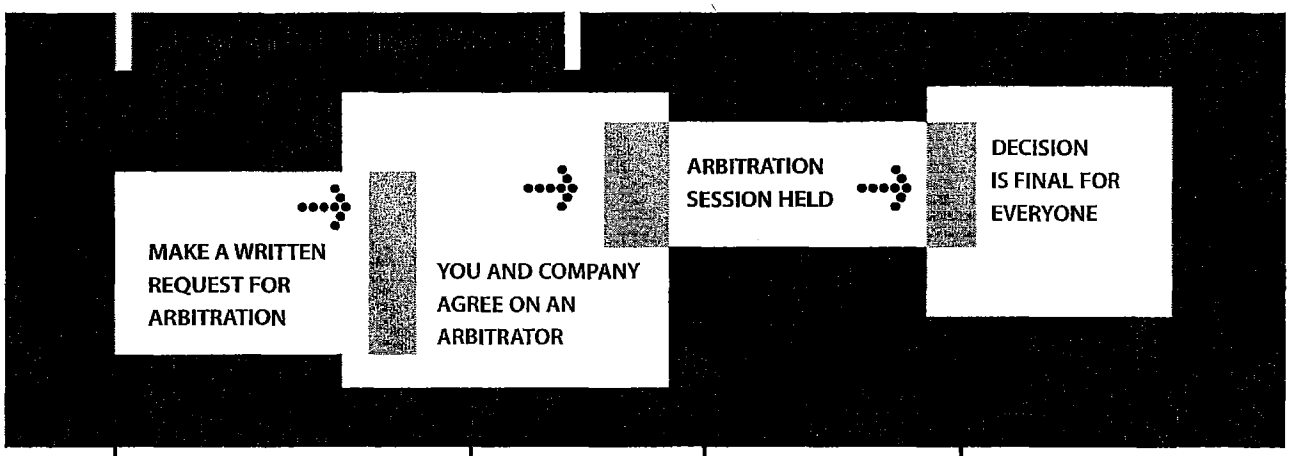
Arbitration

KEY POINTS:

The American Arbitration Association (AAA) is a highly-regarded, non-profit organization that offers a wide range of dispute resolution services to private individuals, businesses, associations and all levels of government. AAA is the largest provider of early dispute resolution services in the United States.

If you are not satisfied with the results of Step 3, you may proceed to Step 4 — Arbitration, a process outside of and independent from the Company. This is the last step in the Solutions InSTORE program.

Arbitration is a lot like a court proceeding, but it's less formal, less time-consuming and less expensive. Even so, many of the same processes will take place — including presenting evidence and hearing witnesses. What's different is that an arbitrator from the American Arbitration Association (who is like a judge), makes the final decision rather than a jury.



You make a written request for arbitration to the Office of Solutions InSTORE within 30 days of Step 3 decision	You and the Company agree on an arbitrator	Arbitration session is usually held within 90 days of arbitrator selection	The arbitrator's decision is final and binding for everyone

MONETARY AWARDS – The arbitrator can award the same damages available in a court of law – and if the decision is in your favor, **you** receive the benefits, not your lawyer.

LEGAL COUNSEL – You may wish to have an attorney present at arbitration. The Solutions InSTORE program will reimburse you for up to $2,500 in a rolling calendar year for attorney costs related to arbitration. You can use this money to consult an attorney to see if you should bring your claim to arbitration or for the actual cost of having one present at the proceeding. If you don't bring an attorney to arbitration, the Company won't either. In this case, Solutions InSTORE will pay up to $500 of the expenses you may incur in preparing and presenting your claim.

ARBITRATION COSTS – Arbitration costs are separate from attorney costs. You'll pay a portion of the arbitration costs (filing fee) up to a maximum of $125. And, if the arbitrator rules in your favor, the Company will reimburse you for your portion of the filing fee.

Taking your claim to arbitration is like taking your claim to a court of law. The same remedies are available to you as in a court of law, however, when you agree to arbitrate instead of taking your claim to court, Solutions InSTORE has several other advantages and benefits for you.

	STEP 4: arbitration	court of law (national perspective)
WHO HEARS MY CLAIM?	An independent arbitrator from outside the Company, specially qualified to hear employment related disputes. For example, retired judges may serve in this role.	A judge who may not specialize in employment law or jury who is completely unfamiliar with and has no specific training in employment law.
HOW QUICKLY CAN MY DISPUTE BE RESOLVED?	Most arbitration processes take less than 12 months to complete, from filing to hearing. That means you will be able to have a final resolution much faster.	In a court of law, your claim will typically take much longer to resolve. Nationwide, employment cases often last from 1 to 5 years, depending on the facts.
WHAT IS THE COST TO FILE A CLAIM?	A percent of your pay, however, in no case will you pay more than $125.	The current fee to file your claim in federal district court is $350, and if further appeals are required additional fees apply. Many state courts have filing fees of $150 or more.
DO I GET ANY KIND OF LEGAL FINANCIAL BENEFIT?	You can receive up to $2,500 per rolling calendar year.	None
AM I REQUIRED TO HAVE AN ATTORNEY?	No, but you can if you want. It is your choice. The tone of an Arbitration proceeding is much less formal than a court of law, even though it can have the same results. Many employees choose to represent themselves. And if you choose not to bring an attorney, the Company won't either.	While you can represent yourself in a court of law, the legal system is much more formal and complex, often requiring you to obtain legal representation to manage through the system.

[redacted] the decision is yours

Your Solutions InSTORE enrollment period will be your opportunity to decide whether you want to receive all four steps of this program. You are automatically covered by Step 4 unless you choose to exclude yourself. When covered by Step 4 final and binding arbitration, you and the Company agree to use arbitration as the sole and exclusive means to resolving any dispute regarding your employment; we both waive the right to civil action and a jury trial. If you decide you want to be excluded from participating in and receiving the benefits of Step 4, we need you to tell us in writing by completing the form enclosed in this brochure and returning it to the Office of Solutions InSTORE at the address provided within 30 days of your hire date. In this case, Steps 1-3 will continue to apply to you – you will no longer, however, be eligible for the benefits available under the Step 4: Arbitration process.

Choosing to be covered by Step 4 is your decision. We urge you to read the Plan Document and educate yourself about the benefits and limitations of arbitration to make an informed decision that's best for you. There are many sources of information and opinions about arbitration. One excellent source of information is the AAA website, which you can access at www.adr.org.

At Macy's, we have a special community - and anytime you have a problem at work, it matters. You deserve respect, attention and a clear, unbiased process to help resolve your problems – quickly and fairly. That's Solutions InSTORE.

More specific details are in the program's Plan Document, which is included here. You should read it. A copy of the Plan Document can also be obtained through www.employeeconnection.net, a request to your local human resources representative, an email sent to solutions.instore@[redacted]com or by calling the Office of Solutions InSTORE at 1-866-285-6689.

things to consider about arbitration

In our view:

- **Many companies are adopting dispute resolution programs which include arbitration.**
- **Court dockets are extremely crowded. The vast majority of lawsuits never get to trial. Arbitration can provide better access to justice for individual employee claims that are not economical for an attorney to take to court.**
- **Arbitration is faster, cheaper and more satisfying for parties than traditional litigation.**

	Step 4 arbitration	vs	Litigation (national perspective)
LENGTH OF TIME TO A FINAL HEARING (ASSUMING CASE GOES TO FINAL HEARING)	Plan provides for about a 130 day maximum, if the parties promptly select an arbitrator who can take the case on schedule.	vs	Can range from 1-5 years in many jurisdictions.
COMPANY COST	On average, approximately $14,000 per arbitration.[1]	vs	Companies may spend tens of thousands of dollars on a single individual employment case.
EMPLOYEE COST	Filing fee up to one day's pay capped at $125, which is refunded if employee wins. Employee eligible for $2,500 from the Company to help offset attorney costs, or for $500 otherwise.	vs	A minimum filing fee of $350 (Federal District Court), with many state filing fees over $150. No legal financial assistance benefit to help offset attorney fees.
CLASS ACTIONS	Not Permitted	vs	Permitted, but they require employees to prove that a class is proper under various legal tests.

- The American Arbitration Association (AAA) is a not-for-profit agency Macy's chose to oversee the arbitration step of Solutions InSTORE. AAA is the largest provider of arbitration services in the world with more than 75 years of experience and over 2 million disputes administered.
- AAA has been endorsed by the following organizations: American Civil Liberties Union, Federal Mediation and Conciliation Service, and National Academy of Arbitrators. In our opinion, Solutions InSTORE exceeds the AAA's Due Process Protocol.

1 Limited to AAA administration fees, arbitrator costs, and legal stipend or attorney fees incurred as a result of arbitration in actual cases in the Solutions InSTORE program through 12/31/07.

Solutions Early Resolution In•STORE Positive Workplace

EARLY DISPUTE RESOLUTION PROGRAM ELECTION FORM

macy's inc

RETURN THIS FORM ONLY IF EXCLUDING YOURSELF FROM PARTICIPATION IN THE BENEFITS OF ARBITRATION UNDER SOLUTIONS INSTORE

[redacted] is pleased to provide our employees the unique benefit of Solutions InSTORE. Solutions InSTORE is our 4-Step early dispute resolution program. It's here for any and all disputes you may have concerning your employment. It provides many opportunities to resolve almost any type of workplace dispute – large or small. Solutions InSTORE is about early resolution, so we can preserve our work relationships and you can enjoy the kind of work environment that supports success.

You are covered by all 4 Steps of the program when you take or continue a job with us. That means that if you have any concerns or claims about working here, Solutions InSTORE is the way to get them resolved. Most disputes are resolved early in the program. In the rare case a concern is not resolved after three review opportunities, Step 4 – Arbitration is available. Issues at Step 4 are resolved by a professional from the American Arbitration Association in an arbitration process, rather than by a judge or jury in a court process.

It is important to review the entire Solutions InSTORE program brochure and Plan Document. These materials came with this form. They describe the features of the program, including its benefits and tradeoffs. They also describe what you need to do if you prefer not to be covered by Step 4 – Arbitration. You can also get information about the program from **www.employeeconnection.net/solutionsinstore**, your local human resources representative, or by calling the Office of Solutions InSTORE toll free at 866-285-6689.

During the 30 days following your hire date, you have the option to exclude yourself from being covered by Step 4 – Arbitration and its benefits. The choice you make will stay in effect for the entire duration of your employment and afterwards. This form serves as an election form if you choose not to be covered by Arbitration. Whether to stay covered by or exclude yourself from Step 4 is your own decision. You should read all information, including the program brochure, the Plan document, and this form, carefully.

Complete and return this form ONLY IF YOU **DO NOT** WANT TO BE COVERED BY THE BENEFITS OF ARBITRATION UNDER SOLUTIONS INSTORE. ***In this case, your completed form must be returned to the Office of Solutions InSTORE and postmarked no later than 30 days from your hire date.*** Si le gustaría tener este formulario en español, favor de llamar el numero 1-866-285-6689.

Please CLEARLY print all requested information.

Full Name _____ Social Security Number _____

Address _____ Home Phone Number (___) _____

City _____ State _____ Zip _____ Employee ID Number _____

Division Name _____ Store/Work Location Name _____

[ ] I **Decline Step 4 – Arbitration.**
I have read all the information about Solutions InSTORE and I elect NOT to stay covered by Arbitration.

AUTHORIZATION ***I have read and understand the program information. I voluntarily agree that I am waiving the ability to participate in Step 4 of the Solutions InSTORE program. Please keep a copy of this form.***

I _____ on _____ understand that my election as of this date is binding for the
(Associate Signature) (Date)
duration of my employment with Macy's, Inc. and after my employment ends.

If declining to be covered by Step 4 - Arbitration, return your form to:
Solutions InSTORE
P.O. Box 8083
Mason, OH 45040-9853

Solutions Early Resolution
In•STORE Positive Workplace

PLAN DOCUMENT

EARLY DISPUTE RESOLUTION

RULES AND PROCEDURES

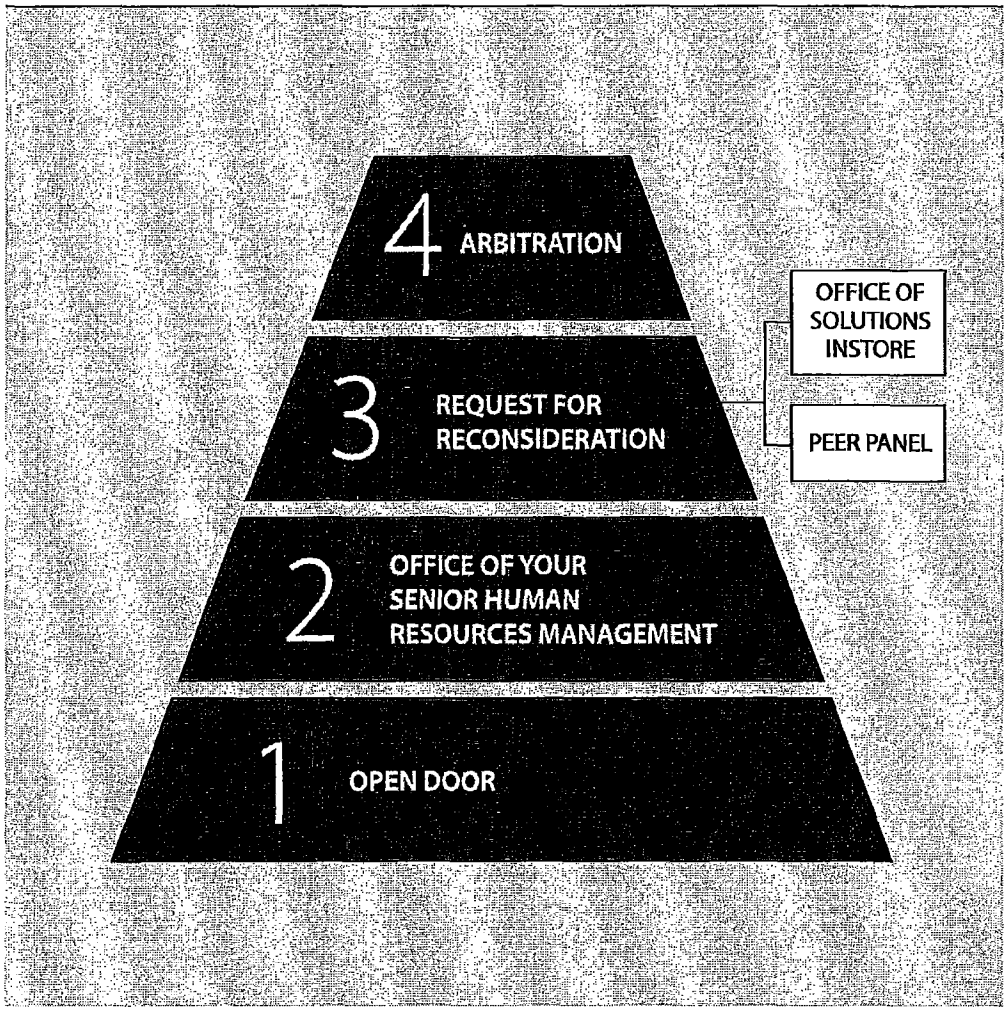
January 1, 2007

If you need any accommodation to help you read and understand this Solutions InSTORE Plan Document, please call the Office of Solutions InSTORE at 1-866-285-6689.

Si le gustaría tener este Documento del Plan en español, favor de llamar el numero 1-866-285-6689.

Solutions In•STORE

Early Resolution → Positive Workplace



[redacted] and its subsidiaries and divisions (the "Company") care about their people. We know that from time to time Associates can have problems at work. And even routine differences can get bigger when there are no resources to help solve them.

In 2004, the Company set out to find a more effective way to resolve workplace disputes. We wanted a way that would benefit everyone involved. Our open door policy was a good place to start. Over the years, the Company has had a policy to help Associates handle problems by working with supervisors and/or Human Resources. To make this policy even better known and improve its effectiveness, the Company added new features. Together with Open Door they became our early dispute resolution program: Solutions InSTORE.

We are convinced that a full internal review of differences is the quickest and most productive way to resolve these disputes. It also maintains good working relationships and avoids unnecessary confrontations. So, Open Door **(Step 1)** continues to be the foundation of our program. It must be used before taking the next step.

If you are not satisfied with the result, you can request to have your issue reviewed by the Office of Senior Human Resources Management **(Step 2)**. The Senior Vice President or another Human Resources executive who was not involved in the Open Door process will review your issue. They'll get back to you in writing. Steps 1 and 2 are available for any disputes relating to your employment with the Company.

If you are not satisfied with the result at Step 2, and you believe your situation involves legally protected rights, you can make a Request for Reconsideration **(Step 3)**. Step 3 gives you the option, depending on the nature of your claim, of two methods to continue to seek resolution. One method is Peer Review. A panel of your peers decides the outcome of your dispute. The other method is review by a representative from The Office of Solutions InSTORE. This office is located in Macy's Employee Relations Department in Cincinnati.

In those relatively rare situations that, for whatever reason, your dispute cannot be resolved at Step 3 and you wish to pursue it further, Solutions InSTORE provides for a private, professional way to resolve it outside the company. You can request Arbitration **(Step 4)**. This process involves an Arbitrator. The Arbitrator is a professional, neutral third-party selected by both you and the Company. After a hearing, the Arbitrator renders a final decision. The decision is binding on both the Company and you. Nothing in the Solutions InSTORE program, however, prevents you from filing, at any time, a charge or complaint with a government administrative agency like the EEOC, for example.

All Associates agree to be covered by Step 4 – Arbitration by accepting or continuing employment with the Company after the Effective Date. Associates are given the option to exclude themselves from Arbitration by completing an election form within the prescribed time frame. Until and unless an Associate elects to be excluded from arbitration within the prescribed time frame, the Associate is covered by Step 4 – Arbitration.

The following pages explain how Solutions InSTORE works.

Step 1 – Open Door

The Company's open door policy encourages Associates to try to resolve any problems at work with their immediate supervisors. If the Associate is unsatisfied with the immediate supervisor's response or needs to talk to someone other than the supervisor, the Associate may take the problem to the next higher level of supervision. Open Door also provides that the Associate may contact the Human Resources department for advice or assistance at any time.

Step 2 – Review by the Office of Senior Human Resources Management

If the Associate is not satisfied with the result of Open Door (Step 1), the Associate may go to Step 2. To do that, the Associate files a written request for review with the Office of Senior Human Resources Management within thirty (30) days of the Step 1 decision. The complaint is referred to an appropriate HR executive, one who was not involved at Step 1, who will conduct an impartial investigation. A written decision is then issued generally within forty-five (45) days of receiving the complaint. Along with the decision are instructions for pursuing Step 3 if the Associate is not satisfied with the results of Step 2.

Steps 1 and 2 are available for any disputes relating to your employment at the Company. Steps 3 and 4 are available only for claims involving legally protected rights. "Legally protected rights" means claims the Associate could raise in a court or before an administrative agency.

Step 3 – Request for Reconsideration

For claims involving legally protected rights,if the Associate is not satisfied with the results of Step 2, the Associate may go to Step 3. To do that, the Associate contacts the Office of Solutions InSTORE within thirty (30) days of the Step 2 decision to file a written Request for Reconsideration. Step 3 involves two features the Associate may consider:

1 – Peer Review

Peer Review is available if the Associate's claim involves:

- A final warning or the final phase of written commitment to change or improve a performance issue, or
- Termination of employment,

and does not involve issues claiming harassment, discrimination, a reduction in force, layoff, or alleged statutory violations. If the Associate chooses Peer Review, a representative from The Office of Solutions InSTORE gives the Associate contact information for a division facilitator. The Associate has ten (10) days to contact the facilitator. The facilitator arranges for a panel proceeding. A volunteer panel is assembled to review the Associate's complaint and render a decision. This panel consists of peers from the Associate's level, one (1) from the next level and one (1) non-voting facilitator to manage the process. Numbers of panelists may vary by division, region or location. Panels always consist of at least three (3) voting members. The panel is assembled to review the Associate's complaint. A response is given within five (5) days of the conclusion of the panel proceedings.

A decision of the Peer Review panel that upholds the Associate's claim is final and binding on the Company. If the panel denies the Associate's claim, the Company will let the Associate know the procedures for continuing on to Step 4.

2 – Review by the Office of Solutions InSTORE

This feature is available for all claims involving legally protected rights. If the Associate chooses review by the Office of Solutions InSTORE, the Solutions InSTORE Program Manager will send to the Associate a confirmation that the complaint was received. A representative of the Office of Solutions InSTORE then conducts an investigation and provides the Associate with a decision in writing. The decision is generally provided within forty-five (45) days of receiving the complaint. A decision that upholds the Associate's claim is final and binding on the Company. But a decision denying the Associate's claim in any way may be challenged by requesting arbitration under Step 4. If the claim is denied, the company will let the Associate know the procedures for continuing on to Step 4.

Step 4 – Arbitration Rules and Procedures

Article 1 – Individuals Covered

This Plan Document applies, as of the Effective Date provided in Article 4, to the following individuals, provided that they are not covered by a collective bargaining agreement with Macy's:

a. Newly Hired Associates

All Associates hired by Macy's with a first day of employment on or after January 1, 2007.

b. Covered May Associates

Associates whose employment with Macy's relates to the merger of The MAY Department Stores Company with and into [redacted] on August 30, 2005 (the "Merger"), as defined in i and ii below:

i. Former MAY Associates continuously employed by Macy's Retail Holdings, Inc., formerly known as The MAY Department Stores Company, between August 30, 2005 and January 1, 2007

ii. Any Associate hired with a first day of employment before January 1, 2007 by a Macy's division or subsidiary or operating unit that was an affiliate of MAY before the Merger (e.g., a store, a distribution center, a call center, etc.)

"Macy's" means any division or subsidiary or operating unit or entity related to [redacted]

All Associates are automatically covered by all 4 steps of the program by taking or continuing a job with the Company. That means that all Associates agree, as a condition of employment, to arbitrate any and all disputes, including statutory and other claims, not resolved at Step 3. However,
Arbitration is a voluntary condition of employment. Associates are given the option of excluding themselves from Step 4 arbitration within a prescribed time frame. Issues at Step 4 are decided by a professional from the American Arbitration Association in an arbitration process, rather than in a court process. Arbitration thus replaces any right you might have to go to court and try your claims before a jury. You are covered by Step 4 unless and until you exercise the option to exclude yourself from arbitration. Whether you choose to remain covered by arbitration or to exclude yourself has no negative effect on your employment.

Any Associate who experiences a break in service with the Company of sixty (60) days or less, or who transfers from one subsidiary, division or affiliated Macy's Company to another, remains covered by Arbitration, unless the Associate previously excluded himself during the prescribed time period. If the Associate becomes re-employed with the Company following a break in service greater than sixty (60) days, the Associate is treated as a new hire and is given the opportunity to elect to be excluded from arbitration during the prescribed time period.

Article 2 – Claims Subject to or Excluded from Arbitration

Except as otherwise limited, all employment-related legal disputes, controversies or claims arising out of, or relating to, employment or cessation of employment, whether arising under federal, state or local decisional or statutory law ("Employment-Related Claims"), shall be settled exclusively by final and binding arbitration. Arbitration is administered by the American Arbitration Association ("AAA") under these Solutions InSTORE Early Dispute Resolution Rules and Procedures and the employment arbitration portion of the AAA's Employment Arbitration Rules and Mediation Procedures. Arbitration is held before a neutral, third-party Arbitrator. The Arbitrator is selected in accordance with these Solutions InSTORE Early Dispute Resolution Rules and Procedures. If there are any differences between the Solutions InSTORE Early Dispute Resolution Rules and Procedures and the employment arbitration portion of the AAA's Employment Arbitration Rules and Mediation Procedures, the Solutions InSTORE Early Dispute Resolution Rules and Procedures shall apply.

Arbitration shall apply to any and all such disputes, controversies or claims whether asserted by the Associate against the Company and/or against any employee, officer, director or alleged agent of the Company. Arbitration shall also apply to any and all such civil disputes, controversies or claims asserted by the Company against the Associate.

All unasserted employment-related claims as of January 1, 2007 arising under federal, state or local statutory or common law, shall be subject to arbitration. Merely by way of example, Employment-Related Claims include, but are not limited to, claims arising under the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), 42 U.S.C. § 1981, including amendments to all the foregoing statutes, the Employee Polygraph Protection Act, state discrimination statutes, state statutes, and/or common law regulating employment termination, misappropriation, breach of the duty of loyalty, the law of contract or the law of tort; including, but not limited to, claims for malicious

prosecution, wrongful discharge, wrongful arrest/wrongful imprisonment, intentional/negligent infliction of emotional distress or defamation.

Claims by Associates that are required to be processed under a different procedure pursuant to the terms of an employee pension plan or employee benefit plan shall not be subject to arbitration under Step 4. Claims by Associates for state employment insurance (e.g., unemployment compensation, workers' compensation, worker disability compensation) or under the National Labor Relations Act are also not subject to Arbitration under Step 4. Statutory or common law claims made outside of the state employment insurance system alleging that the Company retaliated or discriminated against an Associate for filing a state employment insurance claim, however, shall be subject to arbitration.

Nothing in these Solutions InSTORE Early Dispute Resolution Rules and Procedures prohibits an Associate from filing at any time, a charge or complaint with a government agency such as the EEOC. However, upon receipt of a right to sue letter or similar administrative determination, the Associate's claim becomes subject to arbitration as defined herein.

Article 3 – Dismissal/Stay of Court Proceeding

By agreeing to arbitration, the Associate and the Company agree to resolve through arbitration all claims described in or contemplated by Article 2 above. This means that neither the Associate nor the Company can file a civil lawsuit in court against the other party relating to such claims. If a party files a lawsuit in court to resolve claims subject to arbitration, both agree that the court shall dismiss the lawsuit and require the claim to be resolved through the Solutions InSTORE program.

If a party files a lawsuit in court involving claims that are, and other claims that are not, subject to arbitration under Step 4, such party shall request the court to stay litigation of the nonarbitrable claims and require that arbitration take place with respect to those claims subject to arbitration, assuming the earlier steps have been exhausted. The Arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any later court lawsuit on any nonarbitrable claims.

Article 4 – Effective Date

As to any Individuals Covered (as defined in Article 1), the Solutions InSTORE program is effective January 1, 2007.

Article 5 – Time Limit to Initiate Arbitration

Arbitration must be initiated in accordance with the time limits contained in the applicable law's statute of limitations. The period of time elapsed during which the Associate pursued his or her claims under Steps 1-3 of this Program is added on to the applicable limitations period.

Article 6 – Commencement of Arbitration

To initiate arbitration, the Associate or Company must give written notice to the other party and/or person who is alleged to be liable in the dispute ("Claimant"). Notice to the Company must be given to the Office of Solutions InSTORE.

Notice to the Associate must be given by mailing to the Associate's last known home address.

The notice shall include a statement of the nature of the claim together with a brief description of the relevant facts, the remedies including any amount of damages being sought, and the address which the Claimant will use for the purpose of the arbitration.

Within thirty (30) days after notice of a dispute is given, the other party shall give its response ("Respondent"). The response shall state all available defenses, a brief description of relevant facts and any related counterclaims then known.

Within thirty (30) days after such counterclaims are given, the Claimant shall give Respondent a brief statement of the claimant's defenses to and relevant facts relating to the counterclaims.

Claims and counterclaims may be amended before selection of the arbitrator and thereafter with the arbitrator's consent. Notices of defenses or replies to amended claims or counterclaims shall be delivered to the other party within the thirty (30) days after the amendment.

Article 7 – Selection of an Arbitrator

Both the Company and the Associate shall participate equally in the selection of an Arbitrator to decide the arbitration. After receiving and/or filing an Arbitration Request Form, the Solutions InSTORE Program Manager shall ask the American Arbitration Association to provide the Company and the Associate a panel of seven (7) neutral arbitrators with experience deciding employment disputes.

The Company and the Associate then shall have the opportunity to review the background of the arbitrators by examining the materials provided by the American Arbitration Association. Within seven (7) calendar days after the panel composition is received, the Associate and the Company shall take turns striking unacceptable arbitrators from the panel until only one remains. The Associate and the Company will inform the American Arbitration Association of the remaining arbitrator who will decide the dispute. However, if both parties agree that the remaining arbitrator is unacceptable, a second panel will be requested from the American Arbitration Association and the selection process will begin again. If both parties agree no one on the second panel is acceptable, either party may request the American Arbitration Association to simply appoint an Arbitrator who was not on either panel.

Article 8 – Time and Place of Arbitration

The arbitration hearing shall be held at a location within fifty (50) miles of the Associate's last place of employment with the Company, unless the parties agree otherwise. The Parties and the Arbitrator shall make every effort to see that the arbitration is completed, and a decision rendered, as soon as possible. There shall be no extensions of time or delays of an arbitration hearing except in cases where both Parties consent to the extension or delay, or where the Arbitrator finds such a delay or extension necessary to resolve a discovery dispute or other matter relevant to the arbitration.

Article 9 – Right to Representation

Both the Associate and the Company shall have the right to be represented by an attorney. If the Associate elects not to be represented by an attorney during the arbitration proceedings, the Company will not have an attorney present during the arbitration proceedings.

Article 10 – Discovery

a. Initial Disclosure

Within fourteen (14) calendar days following the appointment of an Arbitrator, the Parties shall provide each other with copies of all documents upon which they rely in support of their claims or defenses. However, the parties need not provide privileged documents that are protected from disclosure because they involve attorney-client, doctor-patient or other legally privileged or protected communications or materials. Throughout the discovery phase, each party shall provide the other party with any and all such documents relevant to any claim or defense.

Upon written request, the Associate shall be entitled to a copy of all documents (except privileged documents as described above) in the Associate's "PERSONNEL FILE."

b. Other Discovery

i. Interrogatories/Document Requests

Each party may propound one (1) set of twenty (20) interrogatories (including subparts) to the other party. Interrogatories are written questions asked by one party to the other, the recipient must answer under oath. Such interrogatories may include a request for all documents upon which the responding party relies in support of its answers to the interrogatories. Answers to interrogatories must be served within twenty-one (21) calendar days of receipt of the interrogatories.

ii. Depositions

A deposition is a statement under oath that is given by one party in response to specific questions from the other party. It is usually recorded or transcribed by a court reporter. Each party shall be entitled to take the deposition of up to three (3) relevant individuals of the party's choosing. The party taking the deposition shall be responsible for all associated costs, such as the cost of a court reporter and the cost of a transcript.

iii. Additional Discovery

Upon the request of any party and a showing of appropriate justification, the Arbitrator may permit additional relevant discovery, if the Arbitrator finds that such additional discovery is not overly burdensome, and will not unduly delay the conclusion of the arbitration.

c. Discovery Disputes

The Arbitrator shall decide all disputes related to discovery. Such decisions shall be final and binding on the parties. In ruling on discovery disputes, the arbitrator need not follow but may consult the discovery rules contained in the Federal Rules of Civil Procedure.

d. Time for Completion of Discovery

All discovery must be completed within ninety (90) calendar days after the selection of the Arbitrator, except for good cause shown as determined by the Arbitrator. In order to expedite the arbitration, the parties may initiate discovery prior to the appointment of the Arbitrator.

Article 11 – Hearing Procedure

a. Witnesses

Witnesses shall testify under oath, and the Arbitrator shall afford each party a sufficient opportunity to examine its own witnesses and cross-examine witnesses of the other party. Either party may issue subpoenas compelling the attendance of any other person necessary for the issuing party to prove its case.

i. Subpoenas

A *subpoena* is a command to an individual to appear at a certain place and time and give testimony. A *subpoena* also may require that the individual bring documents when he or she gives testimony. To the extent authorized by law, the Arbitrator shall have the authority to enforce and/or cancel such subpoenas. *Subpoenas* must be issued no less than ten (10) calendar days before the beginning of an arbitration hearing or deposition.

The party issuing the *subpoena* shall be responsible for the fees and expenses associated with the issuance and enforcement of the subpoena, and with the attendance of the subpoenaed witness at the arbitration hearing.

ii. Sequestration

The Arbitrator shall ensure that all witnesses who testify at the arbitration are not influenced by the testimony of other witnesses. Accordingly, unless the Arbitrator finds cause to proceed in a different fashion, the Arbitrator shall sequester all witnesses who will testify at the arbitration, however, the Arbitrator shall permit the Associate involved in the arbitration and the Company's designated representative to remain throughout the arbitration, even though they may or may not testify at the hearing.

b. Evidence

The parties may offer evidence that is relevant and material to the dispute and shall produce any and all non-privileged evidence that the Arbitrator deems necessary to a determination of the dispute. The Arbitrator need not specifically follow the Federal Rules of Evidence, although they may be consulted to resolve questions regarding the admissibility of particular matters.

c. Burden of Proof

Unless the applicable law provides otherwise, the party requesting arbitration or the party filing a counterclaim has the burden of proving a claim or claims by a preponderance of the evidence. To prevail, the party bringing the arbitration must prove that the other's conduct was a violation of applicable law.

d. Briefing

Each party shall have the opportunity to submit one (1) dispositive motion, one (1) pre-hearing brief, and one (1) post-hearing brief, which is a written statement of facts and law, in support of its position. Submission of such briefs is not required, however, briefs shall be typed and shall be limited in length to twenty (20) double-spaced pages.

e. Transcription

The parties may arrange for transcription of the arbitration by a certified reporter. The party requesting transcription shall pay for the cost of transcription.

f. Consolidation

i. Claims

The Arbitrator shall have the power to hear as many claims as a Claimant may have consistent with Article 2 of these Solutions InSTORE Early Dispute Resolution Rules and Procedures.

The Arbitrator may hear additional claims that were not mentioned in the Arbitration Request Form. To add claims, the Claimant must notify the other party at least thirty (30) calendar days prior to a scheduled arbitration. The additional claims must be timely, under the applicable law, as of the date on which they are added. The other party must not be prejudiced in its defense by such addition.

ii. Parties

The Arbitrator shall not consolidate claims of different Associates into one (1) proceeding. Nor shall the Arbitrator have the power to hear an arbitration as a class or collective action. (A class or collective action involves representative members of a large group, who claim to share a common interest, seeking relief on behalf of the group).

g. Confidentiality

All aspects of an arbitration pursuant to these Solutions InSTORE Early Dispute Resolution Rules and Procedures, including the hearing and recording of the proceeding, shall be confidential and shall not be open to the public. The only exceptions are : (i) to the extent both parties agree otherwise in writing; (ii) as may be appropriate in any subsequent proceeding between the parties: or (iii) as may otherwise be appropriate in response to a governmental agency, legal process, or as required by law.

All settlement negotiations, mediations, and any results shall be confidential.

Article 12 – Substantive Choice of Law

The Arbitrator shall apply the substantive law, including the conflicts of law, of the state in which the Associate is or was employed. For claims or defenses arising under or governed by federal law, the Arbitrator shall follow the substantive law as set forth by the United States Supreme Court. If there is no controlling United States Supreme Court authority, the Arbitrator shall follow the substantive law that would be applied by the United States Court of Appeals and the United States District Court for the District in which the Associate is or was employed.

Article 13 – Arbitrator Authority

The Arbitrator shall conduct the arbitration. The arbitrator shall have the authority to render a decision in accordance with these Solutions InSTORE Early Dispute Resolution Rules and Procedures, and in a manner designed to promote rapid and fair resolution of disputes.

The Arbitrator's authority shall be limited to deciding the case submitted by the party bringing the arbitration. Therefore, no decision by any Arbitrator shall serve as precedent in other arbitrations.

The arbitration procedure contained herein does not alter the Associate's employment status. The status remains alterable at the discretion of the Company and/or terminable at any time, at the will of either the Associate or the Company, with or without cause or prior notice. Accordingly, the Arbitrator shall have no authority to alter the Associate's employment status by, for example, requiring that the Company have "cause" to discipline or discharge an Associate. Nor may the arbitrator otherwise change the terms and conditions of employment of an Associate unless required by federal, state or local law, or as a remedy for a violation of applicable law by the Company with respect to the Associate.

The Arbitrator shall have the power to award sanctions against a party for such party's failure to comply with these Solutions InSTORE Early Dispute Resolution Rules and Procedures or with an order of the Arbitrator. These sanctions may include assessment of costs or prohibitions of evidence. If justified by a party's wanton or willful disregard of these Solutions InSTORE Early Dispute Resolution Rules and Procedures, the Arbitrator may award the sanction of an adverse ruling in the arbitration against the party who has failed to comply.

Article 14 – Award

Within thirty (30) calendar days after the later of the close of the hearing or the receipt of post-hearing briefs, if any, the Arbitrator shall mail to the parties a written decision. The decision shall specify appropriate remedies, if any, if a violation of law is found. If the Associate's claim arises under federal or state statutory law, the award should include findings of fact and conclusions of law; otherwise, the inclusion of such findings and conclusion is at the Arbitrator's discretion. The parties to an arbitration shall be provided with a copy of the Arbitrator's award.

Article 15 – Fees and Expenses

a. Costs Other Than Attorney Fees

i. Definitions

Costs of an arbitration include the daily or hourly fees and expenses (including travel) of the Arbitrator who decides the case, filing or administrative fees charged by the AAA, the cost of a reporter who transcribes the proceeding, and expenses of renting a room in which the arbitration is held. Incidental costs include such items as photocopying or the costs of producing witnesses or proof.

ii. Filing Fee/Costs of Arbitration

An Associate initiating arbitration shall pay the cost of arbitration up to a maximum of the least of one (1) day's base pay or One Hundred Twenty-Five Dollars ($125), whichever is less. Upon filing the request for arbitration, the Associate shall remit such fee. The Company shall pay the remainder of the costs of the arbitration. The Company shall pay the entire filing fee should it initiate arbitration. Except as provided below, each party shall pay its own incidental costs, including attorney's fees.

The AAA has developed guidelines for waiving administrative fees. This Plan is subject to those guidelines.

b. Reimbursement for Legal Fees or Costs

The program does not infringe on either party's right to consult with an attorney at any time. In fact, the Company will reimburse an Associate for this legal consultation and/or representation during Step 4 of the program, at a maximum benefit of Two Thousand Five Hundred Dollars ($2,500) per Associate in a rolling twelve (12) month period. If the Associate is not represented by counsel, the Company will reimburse an Associate for incidental costs up to a maximum of Five Hundred Dollars ($500) per Associate in a rolling twelve (12) month period. The Associate will not be entitled to such reimbursement by the Company if the Arbitrator determines the arbitration claim by the Associate was frivolously filed. Any reimbursement to the Associate will occur following the conclusion of the proceedings upon submission of the Associate's bills for costs of legal services or incidental costs.

c. Shifting of Costs

If the Associate prevails in arbitration, whether or not monetary damages or remedies are awarded, the filing fee shall be refunded to the Associate. The Arbitrator may (based on the facts and circumstances) also require that the Company pay the Associate's share of the costs of arbitration and incidental costs.

Article 16 – Remedies and Damages

Upon a finding that a party has sustained its burden of persuasion in establishing a violation of applicable law, the Arbitrator shall have the same power and authority as would a judge to grant any relief, including costs and attorney's fees, that a court could grant, in conformance with applicable principles of common, decisional and statutory law in the relevant jurisdiction.

Article 17 – Settlement

The parties may settle their dispute at any time without involvement of the Arbitrator.

Article 18 – Enforceability

The arbitration agreement, the arbitration proceedings, and any award rendered pursuant to them shall be interpreted under, enforceable in accordance with, and subject to the Federal Arbitration Act, 9 U.S.C. § 1, et seq. regardless of the state in which the arbitration is held or the substantive law applied in the arbitration. If for any reason the Federal Arbitration Act is inapplicable to enforce this agreement, the Parties agree it will be enforced under the governing state arbitration statute(s).

Article 19 – Appeal Rights

The decision rendered by the Arbitrator shall be final and binding as to both the Associate and the Company. Either party may appeal the Arbitrator's decision to a court in accordance with the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, et seq.

Article 20 – Severability/Conflict with Law

In the event that any of these Solutions InSTORE Early Dispute Resolution Rules and Procedures are held to be unlawful or unenforceable, the conflicting rule or procedure shall be modified automatically to comply with applicable law.

In the event of an automatic modification with respect to a particular rule or procedure, the remainder of these rules and procedures shall not be affected. An automatic modification of one of these rules or procedures shall apply only in regard to the particular jurisdiction and dispute in which the rule or procedure was determined to be in conflict with applicable law. In all other jurisdictions and disputes, these Solutions InSTORE Early Dispute Resolution Rules and Procedures shall apply in full force and effect.

Article 21 – Cancellation or Modification of Dispute Resolution Rules and Procedures or Program

The Company may alter these Solutions InSTORE Early Dispute Resolution Rules and Procedures or cancel the program in its entirety upon giving thirty (30) days written notice to Associates. If such notice is not provided to an Associate, the Solutions InSTORE Early Dispute Resolution Rules and Procedures that covered the Associate prior to the modification or cancellation shall govern.

Article 22 – Change in Control of Macy's

A change in control of the Company shall nullify and cancel the Associate's agreement to be covered by Step 4 – Arbitration, respecting any claims the Associate may have arising after such change. A change in control will be deemed to have occurred if:

i. Macy's is merged, consolidated, or reorganized into or with another corporation or other legal entity unaffiliated with Macy's, resulting in less than a majority of the combined voting power of the then-outstanding securities of the surviving or resulting corporation or entity immediately after such transaction being held in the aggregate by those who were entitled to vote in the election of directors of Macy's (the "Voting Stock") immediately prior to such transaction; or

ii. Macy's sells or otherwise transfers substantially all of its assets to another corporation or other legal entity and, as a result of such sale or transfer, less than a majority of the combined voting power of the then-outstanding securities of such other corporation or entity immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock of Macy's immediately prior to such sale or transfer.

Article 23 – Sale of Subsidiary or Division or Operating Unit

Should Macy's sell a subsidiary or division or operating unit of a subsidiary (through the sale of stock or substantially all of its assets) and such transaction includes transferring Associates to a third-party, a transferring Associate's agreement to arbitration under this program shall remain in effect as to any Employment-Related Claims arising prior to such sale but only as to claims against Macy's or its subsidiaries or divisions and shall be null and void as to any such third-party.

Office of Solutions InSTORE
[redacted]
7 West Seventh Street
Cincinnati, OH 45202
Toll Free Number: 866-285-6689
Email: solutions.instore@[redacted]com

EXHIBIT C

Solutions InSTORE

EARLY DISPUTE RESOLUTION PROGRAM ELECTION FORM

macy's Inc

RETURN THIS FORM ONLY IF EXCLUDING YOURSELF FROM PARTICIPATION IN THE BENEFITS OF ARBITRATION UNDER SOLUTIONS INSTORE

Macy's, Inc. is pleased to provide our employees the unique benefit of Solutions InSTORE. Solutions InSTORE is our 4-Step early dispute resolution program. It's here for any and all disputes you may have concerning your employment. It provides many opportunities to resolve almost any type of workplace dispute – large or small. Solutions InSTORE is about early resolution, so we can preserve our work relationships and you can enjoy the kind of work environment that supports success.

You are covered by all 4 Steps of the program when you take or continue a job with us. That means that if you have any concerns or claims about working here, Solutions InSTORE is the way to get them resolved. Most disputes are resolved early in the program. In the rare case a concern is not resolved after three review opportunities, Step 4 – Arbitration is available. Issues at Step 4 are resolved by a professional from the American Arbitration Association in an arbitration process, rather than by a judge or jury in a court process.

It is important to review the entire Solutions InSTORE program brochure and Plan Document. These materials came with this form. They describe the features of the program, including its benefits and tradeoffs. They also describe what you need to do if you prefer not to be covered by Step 4 – Arbitration. You can also get information about the program from **www.employeeconnection.net/solutionsinstore**, your local human resources representative, or by calling the Office of Solutions InSTORE toll free at 866-285-6689.

During the 30 days following your hire date, you have the option to exclude yourself from being covered by Step 4 – Arbitration and its benefits. The choice you make will stay in effect for the entire duration of your employment and afterwards. This form serves as an election form if you choose not to be covered by Arbitration. Whether to stay covered by or exclude yourself from Step 4 is your own decision. You should read all information, including the program brochure, the Plan document, and this form, carefully.

Complete and return this form ONLY IF YOU **DO NOT** WANT TO BE COVERED BY THE BENEFITS OF ARBITRATION UNDER SOLUTIONS INSTORE. ***In this case, your completed form must be returned to the Office of Solutions InSTORE and postmarked no later than 30 days from your hire date.*** Si le gustaría tener este formulario en español, favor de llamar el numero 1-866-285-6689.

Please CLEARLY print all requested information.

Full Name _____ Social Security Number _____

Address _____ Home Phone Number (___) _____

City _____ State _____ Zip _____ Employee ID Number _____

Division Name _____ Store/Work Location Name _____

[ ] I Decline Step 4 – Arbitration.
I have read all the information about Solutions InSTORE and I elect NOT to stay covered by Arbitration.

AUTHORIZATION ***I have read and understand the program information. I voluntarily agree that I am waiving the ability to participate in Step 4 of the Solutions InSTORE program. Please keep a copy of this form.***

I _____ on _____ understand that my election as of this date is binding for the
(Associate Signature) (Date)
duration of my employment with Macy's, Inc. and after my employment ends.

If declining to be covered by Step 4 - Arbitration, return your form to:
Solutions InSTORE
P.O. Box 8083
Mason, OH 45040-9853

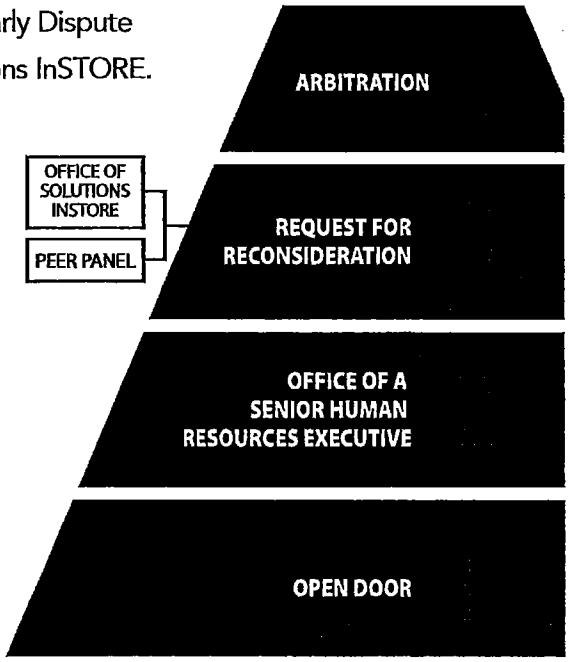
EXHIBIT D

FAST • CONFIDENTIAL • FAIR

OPEN DOOR

with Solutions InSTORE

At [redacted] we believe in building strong work relationships. That's why we have our Early Dispute Resolution (EDR) program called Solutions InSTORE. Our goal is to resolve problems at the earliest possible level, **Step 1: Open Door** and to improve the way we resolve workplace disputes. If you need help, please contact someone with Solutions InSTORE!



To learn more about Solutions InSTORE, talk with your supervisor, a human resources representative or any other member of your management team. If you would like to know how to file a claim at STEP 3 or 4, or have a question about an existing claim, you can call the Office of Solutions InSTORE at 1-866-285-6689.

www.employeeconnection.net/solutionsinstore *6/09*

★b | Solutions InSTORE

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EXHIBIT E

Welcome to [redacted] This form acknowledges that you have been given information about a unique employee benefit: The Solutions InSTORE early dispute resolution program. This document will be placed in your personnel file.

Solutions InSTORE New Hire Acknowledgement

I have received a copy of the Solutions InSTORE brochure and Plan Document and acknowledge that I have been instructed to review this material carefully. I understand that I have 30 days from my date of hire to review this information and postmark my form to the Office of Solutions InSTORE if I wish to exclude myself from coverage under Step 4 of the program, Arbitration. I know I can get more information about Solutions InSTORE, or another copy of the Plan Document, from:

- **www.employeeconnnection.net, Benefits tab, Solutions InSTORE;**
- my Human Resources Representative;
- the Office of Solutions InSTORE, [redacted] 7 West 7th Street, Cincinnati, OH 45202, Solutions.instore@[redacted]com, phone (866) 285-6689, fax (513) 562-6720.

I understand that I am covered by and have agreed to use all 4 steps of Solutions InSTORE automatically by my taking or continuing a job in any part of [redacted]

This means that if at any time I have a dispute or claim relating to my employment, it will be resolved using the Solutions InSTORE process described in the brochure and Plan Document. The process continues to apply to such employment-related disputes even after my employment ends. The Solutions InSTORE process includes Step 4, Arbitration, where disputes are resolved by a professional not affiliated with [redacted] in an arbitration proceeding, instead of by a judge or jury in a court proceeding. I can read all about Solutions InSTORE, including the benefits and tradeoffs of Step 4, in the brochure and Plan Document. Questions or comments about the program can be directed to my Human Resources Representative or the Office of Solutions InSTORE.

I understand that if I do not wish to be covered by Step 4, Arbitration, the only way to notify the Company about my choice is by postmarking my election form within 30 days of hire and mailing it to the Office of Solutions InSTORE. My decision is kept confidential and will not affect my job.

I have personally received the Solutions InSTORE Brochure and understand it is my responsibility to read the brochure. If I have any questions I can contact my HR Representative or the Office Of Solutions InSTORE.

Associates covered under a collective bargaining agreement are not automatically eligible to participate in the Solutions InSTORE program. For employees who move in and out of a collective bargaining unit during a period of continuous employment, their original election made under the program will continue to apply during periods of eligibility.

I also understand that if I have previously been employed by any part or division of Macy's, Inc. within the last sixty (60) days, my prior decision about being covered by Step 4 - Arbitration, will continue to apply.

Please note, as of June 1, 2007, "Federated Department Stores, Inc." changed its name to "[redacted] As a result, all references to "Federated Department Stores", "Federated", or "FDS" in all Solutions InSTORE materials, including but not limited to the Program Brochure, Plan Document, and Election Form, should be replaced with "Macy's, Inc."

JACKSON LEWIS P.C.
DAVID S. BRADSHAW, SB #44888
801 K Street, Suite 2300
Sacramento, CA 95814
Telephone: (916) 341-0404
Facsimile: (916) 341-0141

Attorneys for Defendants [redacted]

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

[redacted], an individual, Plaintiff, vs. [redacted], an Ohio corporation, Defendants.	Case No. [redacted] DECLARATION OF [redacted] IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL ARBITRATION Date Filed: August 15, 2014 Trial Date: None Set

I, [redacted] certify under penalty of perjury and in accordance with the laws of the State of California and the United States of America, as follows:

1. I submit this declaration in support of Defendant [redacted] Inc.'s [redacted] Motion to Compel Arbitration. I am over the age of eighteen years and have personal knowledge of the facts set forth in this declaration. If called as a witness, I can and would competently testify to these facts.

2. I am employed as Director of Insite, Analytics and Operations for [redacted] Systems and Technology ("MST"), which is the information technology ("IT") division of [redacted] MST designs IT solutions and systems for virtually every facet of Macy's operations including the hiring and onboarding of new employees.

3. One of my job duties includes overseeing the management of the online forms that all

new employees must complete and/or acknowledge prior to beginning work at any of [redacted]'s subsidiaries, including [redacted] Inc. The procedures and computer applications described below were those in effect for employees hired by Bloomingdale's in 2011.

4. A candidate who has been offered a job at Bloomingdale's must complete certain online forms before she can begin working. One of the online forms that a new hire must review and electronically sign is the Solutions InSTORE New Hire Acknowledgement. A true and accurate screenshot of an exemplar of the Solutions InSTORE New Hire Acknowledgement form is attached as **Exhibit A.**

5. To access the online forms, the new employee must enter her Social Security Number, date of birth, and ZIP code in the appropriate fields on the Online Forms Login screen and then click "submit." A true and accurate screenshot of an exemplar Login screen is attached as **Exhibit B.**

6. After the employee enters the information and clicks "submit," she is taken to the Online Forms Main Menu screen. This screen lists all of the forms that the employee must complete before she starts working at [redacted] Included among those forms is the Solutions InSTORE New Hire Acknowledgement. A true and accurate screenshot of an exemplar Online Forms Main Menu screen is attached as **Exhibit C.**

7. As stated at the top of the Online Forms Menu, the employee can select and complete each of the forms by clicking the "Fill in Form" next to each form. When the employee clicks the "Fill in the Form" link next to the Solutions InSTORE form, the next screen that the employee will see is the Solutions InSTORE New Hire Acknowledgement.

8. At the bottom of the New Hire Acknowledgement page is an "I Certify" link. By clicking on that link, the employee certifies that she received a copy of [redacted] Solutions InSTORE dispute resolution materials. She also certifies that she understands and agrees that if she does not wish to participate in the Arbitration component of the program she must send an opt-out Election Form to the Office of Solutions InSTORE within 30 days of her date of hire. By clicking the "I Certify" link the employee also certifies that she understands additional information about Solutions InSTORE program is available from the following sources: (1) www.employeeconnection.net; (2) Human Resources; and (3) the Office of Solutions InSTORE. See **Exhibit A.**

9. Once the employee clicks the "I Certify" link at the bottom of the page, a dialogue box appears requesting that the employee electronically sign the Solutions InSTORE New Hire Acknowledgement. To electronically sign the form, the employee must enter her Social Security Number, month and day of birth, and zip code in the appropriate fields and then click the "Continue" link in the electronic signature dialogue box. A true and accurate screenshot of an exemplar electronic signature dialogue box is attached as **Exhibit D**.

10. The information entered in the fields of the electronic signature dialogue box is then compared against the user's session values (i.e., the information entered to Login) to make sure that Social Security Numbers match. If the Social Security Numbers do not match, the user is prompted to re-enter her personal information. After five invalid attempts, the account is locked and the session is terminated. If the Social Security Numbers do match, the database is then queried to ensure that the zip code also matches. If they match, the application saves these fields along with all the other form fields to a database record in an XML format.

11. Once the application saves the electronic signature, a dialogue box appears stating: "Your changes have been saved successfully." This means that the employee's electronic signature data was successfully saved to the database. A true and accurate copy of a screenshot exemplar of the dialogue box acknowledging that the electronic signature was saved is attached as **Exhibit E**. In addition, the status of the Solutions InSTORE New Hire Online Acknowledgement on the Online Forms Menu is updated to "Complete." A true and correct copy of an exemplar reflecting the status change is attached hereto as **Exhibit F**.

12. I along with a select few Online Form Administrators have access to the electronic signature database for Solutions InSTORE New Hire Online Acknowledgements.

13. I accessed the electronic signature database to determine whether Bernadette Tanguilig had electronically signed the Solutions InSTORE New Hire Acknowledgement. Attached as **Exhibit G** is a true and correct copy of Ms. Tanguilig's Solutions InSTORE New Hire Acknowledgement and electronic signature. As **Exhibit G** reflects, Ms. [redacted] electronically signed the Solutions InSTORE New Hire Acknowledgement on May 31, 2011 at 03:13:39 p.m. The computer server on which this information resides is located in Georgia and thus records time based

on the time zone in which it is located – the Eastern time zone.

14. Ms. [redacted] also acknowledged, completed, and/or electronically signed the following online forms: (1) Employee Information and EEO; (2) Job Offer Checklist; (3) Associate Handbook; (4) Code of Conduct; (5) Direct Deposit Authorization; (6) Form W-4; (7) Solutions InSTORE New Hire Acknowledgement; (8) United Way pledge; (9) Associate Discount form; and (10) Form I-9. [redacted] acknowledged, completed, and/or electronically signed all of those online forms on May 31, 2011. According to time stamps, Ms. [redacted] electronically signed the Solutions InSTORE New Hire Acknowledgement between the completion of her I-9 form and her United Way pledge form. Attached hereto collectively as **Exhibit H** are true and accurate copies of the online forms acknowledged, completed, and/or electronically signed by [redacted] on May 31, 2014. The forms have been redacted to remove Ms. [redacted] Social Security Number, financial information, day and month of birth, and other confidential information for privacy reasons.

15. I am a duly authorized custodian of the attached business records of [redacted] maintains the attached records as part of its regular business practices. All of the documents were completed and compiled in the ordinary course of business at or near the time of the acts, conditions, or events recorded by persons with knowledge. The attached copies are true and correct copies.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this 8th day of ~~December, 2014~~ January, 2015, at Johns Creek, Georgia.

[redacted]

EXHIBIT A

Online Forms

Help Exit to Main Menu

Welcome to Macy's, Inc. This form acknowledges that you have been given information about a unique employee benefit: The Solutions InSTORE early dispute resolution program.

SOLUTIONS INSTORE NEW HIRE ACKNOWLEDGEMENT

I have received a copy of the Solutions InSTORE brochure and Plan Document and acknowledge that I have been instructed to review this material carefully. I understand that I have 30 days from my date of hire to review this information and postmark my form to the Office of Solutions InSTORE if I wish to exclude myself from coverage under Step 4 of the program, Arbitration. I know I can get more information about Solutions InSTORE, or another copy of the Plan Document, from:

- **www.employeeconnection.net, Benefits tab, Solutions InSTORE;**
- my Human Resources Representative;
- the Office of Solutions InSTORE, [redacted] 7 West 7th Street, Cincinnati, OH 45202, Solutions.instore@[redacted]com, phone (866) 285-6689, fax (513) 562-6720.

I understand that I am covered by and have agreed to use all 4 steps of Solutions InSTORE automatically by my taking or continuing a job in any part of [redacted]

This means that if at any time I have a dispute or claim relating to my employment, it will be resolved using the Solutions InSTORE process described in the brochure and Plan Document. The process continues to apply to such employment-related disputes even after my employment ends. The Solutions InSTORE process includes Step 4, Arbitration, where disputes are resolved by a professional not affiliated with [redacted] in an arbitration proceeding, instead of by a judge or jury in a court proceeding. I can read all about Solutions InSTORE, including the benefits and tradeoffs of Step 4, in the brochure and Plan Document. Questions or comments about the program can be directed to my Human Resources Representative or the Office of Solutions InSTORE.

I understand that if I do not wish to be covered by Step 4, Arbitration, the only way to notify the Company about my choice is by postmarking my election form within 30 days of hire and mailing it to the Office of Solutions InSTORE. My decision is kept confidential and will not affect my job.

Associates covered under a collective bargaining agreement are not automatically eligible to participate in the Solutions InSTORE program. For employees who move in and out of a collective bargaining unit during a period of continuous employment, their original election made under the program will continue to apply during periods of eligibility.

I also understand that if I have previously been employed by any part or division of [redacted] within the last sixty (60) days, my prior decision about being covered by Step 4 - Arbitration, will continue to apply.

Please note, as of June 1, 2007, "Federated Department Stores, Inc." changed its name to "Macy's, Inc." As a result, all references to "Federated Department Stores", "Federated", or "FDS" in all Solutions InSTORE materials, including but not limited to the Program Brochure, Plan Document, and Election Form, should be replaced with "[redacted]"

Exit to Main Menu Associate will click here to complete electronic signature process. I Certify

EXHIBIT A

[redacted] AFF. - EXHIBIT A

EXHIBIT B

Online Forms 

Help

WELCOME TO THE ONLINE FORMS SIGN IN

Admin Sign In

Please enter your Social Security number, the month and date of your birthdate (format as MMDD), and your Zip Code in the appropriate fields and click Submit.

SSN:

Birthdate: *(MMDD - ex. Jan 15 is 0115)*

ZIP Code: *(first 5 digits)*

Submit

EXHIBIT B

[redacted] - EXHIBIT B

EXHIBIT C

Online Forms

Help Exit Online Forms

ONLINE FORMS MAIN MENU

The forms listed below are required for employment. You can select a form to fill in by clicking the 'Fill in Form' link next to the form name. You can click the 'View Form' link to view the completed form. You can select and complete the forms in any order. The data from each form will be saved as you complete it.

Form Name	Action		Form Status
Employee Information and EEO		View Form	Complete
Job Offer Checklist	Fill in Form	View Form	Incomplete
Associate HandBook	Fill in Form	View Form	Incomplete
Code of Conduct	Fill in Form	View Form	Incomplete
Code of Conduct	Fill in Form	View Form	Incomplete
Direct Deposit	Fill in Form	View Form	Incomplete
Form W-4 Employee's Withholding Allowance Certificate	Fill in Form	View Form	Incomplete
Solutions InSTORE	Fill in Form	View Form	Incomplete
Terms and Conditions of Employment	Fill in Form	View Form	Incomplete
United Way Pledge	Fill in Form	View Form	Incomplete
Universal Associate Discount Information		View Form	Complete
Form I-9 Employment Eligibility Verification	Fill in Form	View Form	Incomplete

Exit - I'll Finish My Forms Later

EXHIBIT C

[redacted] - EXHIBIT C

EXHIBIT D

Online Forms

Help Exit to Main Menu

Welcome to [redacted] This form acknowledges that you have been given information about a unique employee benefit: The Solutions InSTORE early dispute resolution program.

SOLUTIONS INSTORE NEW HIRE ACKNOWLEDGEMENT

I have received a copy of the Solutions InSTORE brochure and Plan Document and acknowledge that I have been instructed to review this material carefully. I understand that I have 30 days from my date of hire to review this information and postmark my form to the Office of Solutions InSTORE if I wish to exclude myself from coverage under Step 4 of the program, Arbitration. I know I can get more information about Solutions InSTORE, or another copy of the Plan Document, from:

- **www.employeeconnnection.net, Benefits tab, Solutions InSTORE;**
- my Human Resources Representative;
- the Office of Solutions InSTORE, [redacted] 7 West 7th Street, Cincinnati, OH 45202, Solutions.instore@[redacted]com, phone (866) 285-6689, fax (513) 562-6720.

I understand that I am covered by and have agre[redacted]ny taking or continuing a job in any part of Macy's, I[redacted]

This means that if at any time I have a dispute o[redacted]e Solutions InSTORE process described in the broch[redacted] such employment-related disputes even after my[redacted] Step 4, Arbitration, where disputes are resolved b[redacted]ion proceeding, instead of by a judge or jury in a cou[redacted]ng the benefits and tradeoffs of Step 4, in the broch[redacted] program can be directed to my Human Resources[redacted]

I understand that if I do not wish to be covered b[redacted] about my choice is by postmarking my election fo[redacted] Solutions InSTORE. My decision is kept confidenti[redacted]

Associates covered under a collective bargaining[redacted] Solutions InSTORE program. For employees who n[redacted]of continuous employment, their original election ma[redacted] eligibility.

I also understand that if I have previously been employed by any part or division of Macy's, Inc. within the last sixty (60) days, my prior decision about being covered by Step 4 – Arbitration, will continue to apply.

Please note, as of June 1, 2007, "Federated Department Stores, Inc." changed its name to [redacted] As a result, all references to "Federated Department Stores", "Federated", or "FDS" in all Solutions InSTORE materials, including but not limited to the Program Brochure, Plan Document, and Election Form, should be replaced with [redacted]

Exit to Main Menu I Certify

Online Forms - Electronic Signature -- Webpage Dialog

Associate's Electronic Signature

Please enter your social security number, the month and day of your birthdate (format as mmdd), and your ZIP code in the appropriate fields as your Electronic Signature.

SSN:

Birthdate: *(MMDD only)*

ZIP Code: *(first 5 digits)*

Continue Cancel

https://rd000xvfnd91/onlineformsdev/comc Local intranet

EXHIBIT D

[redacted] - EXHIBIT D

EXHIBIT E

Online Forms

Help Exit Online Forms

ONLINE FORMS MAIN MENU

The forms listed below are required for employment. You can select a form to fill in by clicking the 'Fill in Form' link next to the form name. You can click the 'View Form' link to view the completed form. You can select and complete the forms in any order. The data from each form will be saved as you complete it.

Form Name	Action		Form Status
Employee Information and EEO		View Form	Complete
Job Offer Checklist	Fill in Form	View Form	Incomplete
Associate HandBook	Fill in Form	View Form	Incomplete
Code of Conduct	Fill in Form	V	
Code of Conduct	Fill in Form	V	
Direct Deposit	Fill in Form	V	
Form W-4 Employee's Withholding Allowance Certificate	Fill in Form	V	
Solutions InSTORE		V	
Terms and Conditions of Employment	Fill in Form	V	
United Way Pledge	Fill in Form	View Form	Incomplete
Universal Associate Discount Information		View Form	Complete
Form I-9 Employment Eligibility Verification	Fill in Form	View Form	Incomplete

Windows Internet Explorer

Your changes have been saved successfully.

OK

Exit - I'll Finish My Forms Later

EXHIBIT E

[redacted] - EXHIBIT E

EXHIBIT F

Online Forms 

Help Exit Online Forms

ONLINE FORMS MAIN MENU

The forms listed below are required for employment. You can select a form to fill in by clicking the 'Fill in Form' link next to the form name. You can click the 'View Form' link to view the completed form. You can select and complete the forms in any order. The data from each form will be saved as you complete it.

Form Name	Action		Form Status
Employee Information and EEO		View Form	Complete
Job Offer Checklist	Fill in Form	View Form	Incomplete
Associate HandBook	Fill in Form	View Form	Incomplete
Code of Conduct	Fill in Form	View Form	Incomplete
Code of Conduct	Fill in Form	View Form	Incomplete
Direct Deposit	Fill in Form	View Form	Incomplete
Form W-4 Employee's Withholding Allowance Certificate	Fill in Form	View Form	Incomplete
Solutions InSTORE		View Form	Complete
Terms and Conditions of Employment	Fill in Form	View Form	Incomplete
United Way Pledge	Fill in Form	View Form	Incomplete
Universal Associate Discount Information		View Form	Complete
Form I-9 Employment Eligibility Verification	Fill in Form	View Form	Incomplete

Exit - I'll Finish My Forms Later

EXHIBIT F

[redacted]. - EXHIBIT F

EXHIBIT G

Welcome to Macy's, Inc. This form acknowledges that you have been given information about a unique employee benefit: The Solutions InSTORE early dispute resolution program. This document will be placed in your personnel file.

Solutions InSTORE New Hire Acknowledgement

I have received a copy of the Solutions InSTORE brochure and Plan Document and acknowledge that I have been instructed to review this material carefully. I understand that I have 30 days from my date of hire to review this information and postmark my form to the Office of Solutions InSTORE if I wish to exclude myself from coverage under Step 4 of the program, Arbitration. I know I can get more information about Solutions InSTORE, or another copy of the Plan Document, from:

- **www.employeeconnnection.net, Benefits tab, Solutions InSTORE;**
- my Human Resources Representative;
- the Office of Solutions InSTORE, [redacted] 7 West 7th Street, Cincinnati, OH 45202, Solutions.instore@macys.com, phone (866) 285-6689, fax (513) 562-6720.

I understand that I am covered by and have agreed to use all 4 steps of Solutions InSTORE automatically by my taking or continuing a job in any part of [redacted]

This means that if at any time I have a dispute or claim relating to my employment, it will be resolved using the Solutions InSTORE process described in the brochure and Plan Document. The process continues to apply to such employment-related disputes even after my employment ends. The Solutions InSTORE process includes Step 4, Arbitration, where disputes are resolved by a professional not affiliated with [redacted] in an arbitration proceeding, instead of by a judge or jury in a court proceeding. I can read all about Solutions InSTORE, including the benefits and tradeoffs of Step 4, in the brochure and Plan Document. Questions or comments about the program can be directed to my Human Resources Representative or the Office of Solutions InSTORE.

I understand that if I do not wish to be covered by Step 4, Arbitration, the only way to notify the Company about my choice is by postmarking my election form within 30 days of hire and mailing it to the Office of Solutions InSTORE. My decision is kept confidential and will not affect my job.

I have personally received the Solutions InSTORE Brochure and understand it is my responsibility to read the brochure. If I have any questions I can contact my HR Representative or the Office Of Solutions InSTORE.

Associates covered under a collective bargaining agreement are not automatically eligible to participate in the Solutions InSTORE program. For employees who move in and out of a collective bargaining unit during a period of continuous employment, their original election made under the program will continue to apply during periods of eligibility.

I also understand that if I have previously been employed by any part or division of Macy's, Inc. within the last sixty (60) days, my prior decision about being covered by Step 4 - Arbitration, will continue to apply.

Please note, as of June 1, 2007, "Federated Department Stores, Inc." changed its name to "[redacted] As a result, all references to "Federated Department Stores", "Federated", or "FDS" in all Solutions InSTORE materials, including but not limited to the Program Brochure, Plan Document, and Election Form, should be replaced with "[redacted]

EXHIBIT H

[redacted]

Your Human Resources representative will provide a copy of the [redacted] Employee Handbook on or before your start date.

Code of Conduct

"Integrity Always" is one of our core values – a value that requires us **to do the right thing – always.**

It means that we have to be **fair and honest** in all our dealings with our co-workers, customers, business partners, shareholders, competitors and the communities in which we live and work.

Failure to act with integrity will cost us dearly, in terms of loss of image and reputation, and ultimately, performance.

The reputation we enjoy today is the legacy of generations of associates who have worked to build our Company and make our red star an emblem of integrity. But, as we all know, a good reputation is a fragile thing – while it takes years to build, it may be destroyed overnight by just one unethical, thoughtless or misguided action.

Since our Company's image and reputation are a reflection of what each one of us says or does, we must maintain the highest standards of ethical business conduct – even when not legally mandated – so that our actions reflect well, both on our Company and us. We have a shared responsibility to make legal compliance and ethical business practices a part of the psyche and fabric of our Company so that we always act in a manner that upholds our values, creates trust and burnishes our image as an honorable and law abiding company.

To meet this responsibility, we must understand what is expected of us – and what is not.

That is the purpose of this Code – OUR Code of Conduct. It will help guide us to live our Company's values as we work towards making our Company stronger and better. We must all read it, seek to understand it, and be guided by its letter and spirit.

Thank you for your personal engagement in ensuring that our Company consistently succeeds the **right way.**

macy's inc

Table of Contents

About This Code

Who is governed by this Code?

This Code applies to all Macy's and [redacted] associates, whether working in stores, central offices, support organizations or elsewhere. When this Code refers to the 'Company,' it means the group of entities where all such associates work. ALL associates at ALL levels, referred to here as "we" or "us", are governed by this Code.

What are our responsibilities as associates?

Each of us should:

- follow all Company policies, including those discussed in this Code and in other materials distributed by the Company, such as associate handbooks and accounting policies,
- know that it is a fundamental principle of Company policy that each of us seek to understand and comply with all laws that relate to our jobs,
- raise concerns, ask questions when in doubt or report suspected violations of Company policies, and
- make the necessary disclosures of any personal conflict of interest as described later in this Code.

Do supervisors have additional responsibilities?

Associates who are supervisors are responsible for creating a culture in which all associates understand the Company's commitment to conducting business legally and ethically, and follow the Company's policies, including those in this Code. Above all, those of us who are in leadership positions must lead by example and create an open environment in which associates feel comfortable raising concerns without fear of retaliation.

Does this Code explain all of the standards and policies we need to know?

This Code is a starting point and provides general guidance. In addition, throughout this Code there are references to other Company policies. We have been provided access to such policies in this Code, as well as guidance on who **must** READ, UNDERSTAND AND FOLLOW.

Although compliance with all applicable laws is a fundamental requirement of our Company's policy, in certain instances, Company policy goes above and beyond the requirements of applicable law. This Code cannot and does not address every standard and policy we must follow, nor does it guide us through every situation or dilemma that we may face while performing our jobs. There are, however, additional resources that give specific guidance, which we may obtain from our supervisor, an HR representative or the Law Department.

As a rule of thumb, when acting on behalf of our Company, associates must ask themselves the following:

Is it legal?

Even if it is legal, does it comply with Company policies?

Even if it is legal and consistent with Company policies, is it the RIGHT THING TO DO?

Would it reflect well on our Company if it appears in tomorrow's newspaper?

If the answer to any of the above questions is "No," or if our good judgment or this Code and the other Company policies do not provide an answer, we must promptly seek help through one of the many channels discussed below.

Is it really necessary to raise concerns?

Yes, it is absolutely critical to do so. By raising your voice, you help protect our Company, our co-workers, our Company's customers and other stakeholders. The Company is counting on each one of us to preserve and protect its image and reputation. A vital way you can do this is by expressing your concern if and when you suspect in good faith that a Company policy has been violated.

- **Raise concerns early.** If you wait, it may get worse.
- **You can report anonymously.** However, if you identify yourself, the Company may be able to follow up with you and provide feedback. If you choose to report anonymously, please give enough details so the Company can investigate fully and accurately.
- **Confidentiality is respected to the maximum possible extent.** If you provide your name, your identity and report will be shared only as needed to look into and address the concern, or if required by law.
- **Retaliation is not tolerated.** Our Company absolutely prohibits retaliation against anyone who raises his or her **voice of integrity** to report a potential violation that he or she reasonably believes has occurred or is likely to occur. Retaliation is grounds for discipline up to and including dismissal. If you believe you have been subjected to retaliation, report it promptly to your HR representative, the Office of Solutions InSTORE or through the **ComplianceConnections.** (ComplianceConnections are telephone and on-line facilities we may use for this purpose. Details regarding ComplianceConnections are provided further below.)

If I report a possible violation, will I get in trouble if my concern turns out to be wrong?

No. You will not be punished or disciplined if you report a violation you believe has occurred or will occur. In fact, as Company employees, we all have a duty to report suspected violations of Company policy. We must, of course, have a reason for suspecting that a violation has occurred or will occur.

Q: I ran into a senior member of my department, Sandy, in the store the other day. She introduced me to her sister who told me that she was very excited because Sandy was using her discount to buy a lot of china for her and that because of Sandy's discount she was getting a lot more pieces than she would otherwise. I thought that Company policy prohibits associates from using their discount for others?

A: Yes, it is a violation of Company policy for associates to use their discount to make a purchase for another person and get reimbursed for the cost of the purchase. Although it is okay to use our discount to buy gifts for family and friends, it is not okay to do so if we receive payment for the cost of such gifts. If you believe a policy has been violated, you should discuss your concern with your supervisor or report what you have observed, since you've seen enough to suggest that there may be a problem.

Q: OK, I reported the situation above. It turned out that Sandy's sister is getting married and that Sandy was purchasing china from her sister's registry as a wedding gift. Am I going to get in trouble because it turned out to be nothing?

A: No. You did the right thing by raising a genuine concern. If anything happens that you feel could be retaliation, report that immediately.

Is it okay to not raise concerns when I am uncomfortable doing so?

No, it is not okay. Integrity Always means doing the right thing, even when it makes us uncomfortable. By doing or saying nothing about actions we honestly believe are in violation of any Company policy, we are violating this Code and are subject to disciplinary action.

How should I raise a concern?

Our Company tries hard to foster an environment of open and honest communications. Our Company's "open door" policy gives associates many options.

- Your supervisor – usually a good place to start.
- Your supervisor's supervisor.
- Your store manager or the head of your Department or location.
- Your HR Department.
- The Office of Solutions InSTORE
- The Law Department.
- ComplianceConnections.

Most issues can be resolved by direct conversations between the people involved. However, if an associate is unsure of where to go for answers, uncomfortable raising issues with individuals within the Company, or wishes to report a potential violation of Company policy anonymously, he or she may raise the concern by using one of the ComplianceConnections.

One of the ComplianceConnections is a toll-free telephone line that is answered by an operator, 24 hours a day / 7days a week. The other is an on-line facility. To access Compliance Connections, call 1-800-763-7290 or visit www.[redacted].com. These contact details are the same as for the Office of Compliance Associate Hotline that we have had for nearly a decade to ask questions and report misconduct. The difference is that ComplianceConnections is operated by an independent third party, which is not a part of the Company.

What happens when I raise a concern via ComplianceConnections?

If an associate accesses ComplianceConnections by telephone, a live operator from our third party service provider will answer questions or will give guidance on how to obtain answers or will check with the right sources within the Company to get the associate's questions answered. This service is available 24 hours a day / 7 days a week.

If an associate calls to report suspected misconduct, the operator will guide the associate through the process and create a report with the details provided. The operator will promptly forward the report to the right sources within the Company for follow-up.

If an associate accesses ComplianceConnections online, via the web, to ask questions or report suspected misconduct the Company's third party service provider will promptly forward the web communication to the right Company sources for follow up.

In each case, the reporting associate will be told how feedback will be provided on the associate's questions or concerns. In some situations, however, because of the nature of the inquiry, the Company or ComplianceConnections may not be able to provide feedback on the investigation.

The Company will investigate concerns about compliance with Company policies as follows:

- The issue will be assigned for investigation to associates who are skilled and objective.
- The investigators will gather information and determine facts. The investigation will be prompt and thorough, and confidentiality will be maintained to the maximum extent possible.
- The investigators may recommend corrective action, if necessary, to appropriate managers for implementation.
- Where appropriate, the associate raising the concern will receive feedback on the outcome.

Can I request a waiver of any requirement of the Code?

Yes, we may request a waiver as described below.

- With respect to associates other than the Company's executive officers, any request for a waiver of the Code's requirements must be submitted to, and to be effective must be approved by, the Company's General Counsel.
- With respect to the Company's executive officers, any request for a waiver of the Code's requirements must be submitted to, and to be effective must be approved by, a majority of the disinterested members of the Company's Board of Directors. All such approved waivers of the requirements of this Code will be promptly disclosed to the Company's stockholders.

Being Respectful... Our Workplace

One of the most valuable assets our Company has is its workforce. Our Company's values – "You Count" and "Teams Win" – are the drivers of our Company's goal to provide a work environment that is inclusive, respectful, safe and healthy – one that fosters wellbeing, energy and creativity. Each one of us is responsible for ensuring that our actions and words help to build and maintain such an environment.

Diversity and Equal Opportunity

What To Know

Our Company embraces diversity and wants its workforce to be as diverse, inclusive and multifaceted as our customer base. Our Company's goal is to offer all individuals equal opportunities within our Company.

What To Do

We must not discriminate against any person on the basis of race, ethnicity, age, religion, gender, sexual orientation, gender identity, national origin, physical or mental disability, genetic information, military status, marital status, medical condition or any other attribute that doesn't relate to the person's job.

Our Company's commitment to diversity and equal opportunity applies to all aspects of our employment – this includes recruitment, hiring, placement, promotion, transfer, compensation, training, recreational and social programs and the use of Company facilities.

We must, however, bear in mind that it is not harassment or discrimination for a supervisor to enforce job performance and standards of conduct equally without regard to any protected characteristics.

If we believe that discrimination has occurred, whether against us or against a co-worker, we must raise our concerns.

All associates must use this link to access, read and understand our Company's EEO & Anti-Harassment Policy.

Q: I consider myself a minority associate. My supervisor has passed me over several times for a promotion. He gave the position each time to associates who I believe are lesser-qualified, non-minority employees, whom I am then asked to train. I think this is discriminatory. What can I do?

A: Ask your supervisor why he/she hasn't selected you. If, however, you are uncomfortable discussing this with your supervisor, or do not get a satisfactory answer, discuss it with your HR representative, Solutions InSTORE, or raise your concern through ComplianceConnections.

Treatment of Co-workers

What To Know

We will treat our co-workers as we would like them to treat us – with respect and dignity. There is zero tolerance for harassment of any kind – whether verbal, written, physical or sexual – or any form of workplace violence.

What To Do

We need to be sensitive and alert to the fact that harassment may take many forms. Sometimes conduct that is not intended to harass may be perceived as harassment by another person. We must avoid all such conduct. Examples include:

- Making offensive or unwelcome remarks, jokes or gestures,
- Making unwelcome sexual advances, requesting sexual favors, making unwanted physical contact or comments, or distributing or displaying sexually explicit, racist or derogatory materials,

- Abusing physically or verbally, threatening, taunting or leering,
- Treating certain associates or customers differently because of race, religion, sex or other characteristic protected by law.

Q: I am a female employee. A male co-worker frequently makes personal comments about my appearance that make me uncomfortable. I've asked him to stop, but he won't. What can I do about it?

A: You should report this to your supervisor, your HR manager, Solutions InSTORE, or through ComplianceConnections.

Health and Safety

What To Know

Our Company strives to create workplaces that are safe, healthy and secure.

What To Do

It is not possible to eliminate every hazard in the workplace, just as it is not possible to prevent all accidents in the safest of homes. That said, we must do our best to avoid them by not creating hazardous conditions, monitoring our workplaces continually, and correcting or eliminating unsafe conditions, if they exist.

Similarly, we must guard against violence in the workplace. We must not tolerate acts or threats of physical violence, including the unauthorized possession of a weapon in a Company workplace. Each of us is responsible for reporting any violence or unsafe conditions that we may observe. And we must always take appropriate and prudent steps to protect our own health and safety.

We also need to maintain a healthy and secure work environment. This means that associates must not possess, consume, sell, purchase or distribute drugs or have open containers of alcohol in our workplaces, or engage in Company business (whether or not in a Company workplace), report to work or operate any Company equipment or vehicle while under the influence of drugs or alcohol. Alcohol may be served at Company-sponsored events, which is the only exception. Associates may take drugs that are prescribed by a licensed physician or are available over the counter. However, if a physician has prescribed medication that requires any accommodation or influences an associate's ability to perform his or her job duties, the manager or HR representative should be notified to discuss reasonable accommodations that are necessary.

Q: I have been asked to skip a routine inspection of a store's escalators, and instead help store management get the store ready for a major sales event. We rarely find a problem when we do this inspection, but it still does not seem right to skip it. I suggested rescheduling the inspection a few days later after the sale, but they want to skip it entirely.

A: Store management is not authorized to cut corners on safety matters. Immediately contact your supervisor, HR department or report this through ComplianceConnections.

Lawful Employment Practices

What To Know

Our Company is committed to complying with all laws regulating employment practices, including pay rates, overtime, meal periods, rest breaks, occupational health and safety, and leaves of absence.

What To Do

We must strive to properly categorize all associates as overtime exempt or non-exempt, and as employee or independent contractor, under employment and tax laws.

Those of us who record time worked, or manage associates who record time, or otherwise have access to time records must make sure that time records accurately reflect all time periods worked. We must not work or permit others to work off the clock. For example, we must not

- fail to record work performed at home,
- delete or conceal hours worked, including overtime hours, or move hours from one day to another to eliminate overtime,
- revise a correctly entered time record, or
- fail to take the required rest and meal breaks, or permit or require others to do so.

Q: I'm an hourly associate, I've been busy lately, but my supervisor does not want me to work more than 40 hours each week. To get my work done, I've been working for a half hour after I clock out each evening. Since this benefits the Company, have I done something wrong?

A: Yes. It is never OK for you to work off the clock. You must record accurately all time periods worked. Not doing so is a violation of Company policy. If you feel that you are not able to complete your work in 40 hours, please discuss your concerns with your supervisor or with your HR manager. As always, you can also bring your concerns to the Company through Solutions InSTORE or ComplianceConnections.

We must also ensure that our Company is in compliance with all laws governing employees with disability and employee leaves of absence, including the Family Medical Leave Act.

All associates must use this link to access, read and understand the form titled "Employee Rights and Responsibilities under the Family and Medical Leave Act."

Being Loyal... Conflicts of Interest

A conflict of interest exists when a personal interest or activity interferes – or appears to interfere – with the duties we perform for or owe to our Company. We owe it to our fellow associates, shareholders and other stakeholders to ensure that no activity of ours at work or home harms our Company's reputation or interests.

All business decisions should be made solely in the Company's best interest, and not for any personal gain. Similarly, when conducting our personal affairs and ourselves, we must avoid actions or situations that create, may create or reasonably appear to create, conflicts with the Company's interests.

Here are some common ways conflicts of interests could arise.

Certain Relationships

What To Know

A conflict of interest may arise if an associate or his or her family member (such as spouse, children, parents or siblings) has a relationship with a business partner or competitor of the Company.

- By "business partner" we mean anyone who does or seeks to do business with the Company. Examples are a supplier or purchaser of goods, services, equipment or real estate.
- By "competitors" we mean anyone in our geographic markets who sells merchandise that is the same as or similar to the merchandise we sell.

Examples of "relationships" that could present a conflict are below.

If one of us or someone in our family

(i) has a substantial amount of stock or other interest in a business partner or competitor,

(ii) accepts an offer by a business partner or competitor to buy stock on terms not generally available to the public, or

(iii) is an officer, director, employee, or consultant of or has some significant relationship with a business partner or competitor. A significant relationship includes marriage, domestic partners, dating relationships, or family (such as sibling, parents, child).

What To Do

Not all relationships present a conflict of interest.

- **The questions we must ask ourselves are:**
  Could the relationship cause me to make or influence a decision that is not in the best interest of the Company? Or, could it look to others as if the relationship is influencing me?
- **Some investments are always wrong.** We must never personally invest in a business partner if we have any involvement in selecting or negotiating with the business partner or if we supervise anyone who has such responsibility.
- **We should carefully weigh a potential new relationship before entering into it.** Seek guidance and permission from our HR representative, who may consult with the Law Department.
- **We should disclose to the Company (either when providing the annual sign off on the Code or promptly to our HR representative after becoming aware of a conflict) all relationships we know about** after reviewing any such relationship we may already have and checking with our immediate family members about relationships they may have.

Q: We need to hire a cleaning service for some stores. We could save our Company a lot of time and effort by hiring my brother's cleaning firm. They would also be the right choice because I would have control over them and they can be trusted to do the job right. And, they'll give us a special price. May I hire his Company?

A: No. Hiring a firm run by a family member is not a sound business practice and it violates our policies. It creates a conflict of interest between your desire to help your brother and your duty to select the most competitive supplier for our Company. Even if you have nothing but our Company's interests at heart, it may appear to others that you are being influenced by your relationship with your brother. However, if you make a full disclosure to your supervisor, HR representative and Law Department, and you remove yourself from the selection process (and no one who reports to you is involved), in certain situations the Company may permit your brother's firm to compete for the work with other bidders.

Q: A vendor of the Company that I do not directly work with is offering its stock for sale to the public. A friend of mine there tells me that the vendor has reserved shares to offer to its customers and business partners. He has offered me an opportunity to participate on this "favored" basis. May I buy some of the offered shares?

A: No. Accepting an offer to purchase a business partner's stock on terms that are not available to the general public violates our policy and must be avoided even if you are not directly involved in our Company's transactions with that vendor.

Gifts and Entertainment

What To Know

The Company does business on the basis of sound business judgment and seeks to treat all of its business partners fairly. Accepting a gift from or giving a gift to any business partner or competitor could create the expectation that they will be treated more favorably than others. We could also appear to be unfair and dishonest in our dealings.

Gifts or gratuities could take many forms – cash, loans or non-cash gifts, such as gift certificates, discounts, gratuities, services, transportation, use of vehicles or vacation facilities, participation in stock offerings, tickets to sporting events or invitations to meals or events. The potential list is endless.

What To Do

Certain gifts and entertainment are permissible, while others are not. When receiving or offering gifts or entertainment, we must follow the Company's guidelines strictly and seek help when we are unsure.

Usually OK

Nominal Gifts – Gifts that are of "nominal" value and are common courtesies in our business, unless they fall in the "Always Wrong" category below, are usually okay to receive or give. Associates may give gifts, such as gift baskets, of nominal value and may also receive such gifts so long as they are shared with co-workers. Occasional invitations to ordinary sports or cultural events and token gifts like pens, mugs and calendars, in each case with a combined retail value of $100.00 or less, are considered nominal in value and may be received and may also be given if we have corporate authority to incur such expenses. As long as these types of gifts do not total more than $100.00 from or to a single source in a calendar year, they do not require disclosure or approval.

Participation in Social Events with Business Partner – There is one exception to the $100 limit on gifts. We may participate in events in which we are interacting with business partners or vendors. Follow these simple guidelines:

- We may accept an invitation from a business partner to a sporting, cultural, overnight outing or other event ("Social Event") in which the business partner also is participating, provided that the face value of the cost for our participation (where it can be reasonably determined or estimated) does not exceed $250.00.
- This exception to the $100 per associate per vendor per year rule for gifts and entertainment applies only in those circumstances where the business partner is personally participating in the Social Event. Otherwise, the $100 rule applies.
- If there is uncertainty with regard to the dollar "value" of a Social Event, the associate should contact the Office of the General Counsel for guidance.
- We may not accept invitations to multiple Social Events from a single business partner if the aggregate face value of all invitations is more than $250.00 in a calendar year, unless we obtain advance written clearance (electronically

or otherwise) from the Office of the General Counsel. Clearance will be based on, among other factors, the business development value of the Social Event(s).

- Unless clearance is obtained as provided above, an associate must (i) pay the business partner for the excess over $250.00 of the aggregate face value of the cost of Social Events in which the associate has participated at the invitation of a single vendor in any single calendar year; and (ii) disclose all such payments in the annual Code of Conduct acknowledgement.

Meals – We may participate as the guest or host in occasional meals with our business partners if:

- It is a common business courtesy in our industry,
- It is not too frequent or excessive in value, and
- There is mutuality in the "give and take" such that we and our business partners have a chance to both treat and be treated.

If we include business partners in meals that we host, the expense should be classified as "Entertainment" in our reimbursement requests.

Vendor Paid Trips – We may accept invitations to vendor sponsored events or meetings only in compliance with our Company's Vendor Paid Trip Policy.

Associates who have been or are likely to be invited to participate in events or trips that are fully or partially paid for by current or potential vendors or business partners, including all associates in buying organizations, must use this link to access, read and understand our Company's Vendor-Paid Trip Policy.

Contributions to Charitable Causes – We may seek contributions from our business partners to charitable causes ONLY in compliance with our Company's policy on soliciting contributions from business partners for charitable causes. This policy may be obtained from the Law Department.

Always Wrong

Some types of gifts and entertainment are **NEVER** permissible and no one can approve them. We may **NEVER:**

- Accept or give any gift or entertainment that is or could be illegal.
- Accept or give a gift of cash or cash equivalent (such as a check, money order or a gift certificate that is convertible to cash), loans, stock or stock options.
- Participate in any entertainment that is inappropriate, sexually oriented or otherwise violates our policy of mutual respect.
- Participate in any activity or accept or give any gift that you know would cause the person giving or accepting the gift or entertainment to violate his or her own employer's policies.

Always Ask

It may not always be clear to us whether certain gifts and entertainment are permissible. In such situations we must not proceed without obtaining the written approval of our HR representative who will consult with the Law Department.

When approval is requested, members of the Law Department will consider the following:

- whether the gift or entertainment would be likely to influence your objectivity,
- whether there is a valid business reason to attend the event,
- whether we would be setting a precedent by accepting or giving the gift or attending the event, and
- whether it could reasonably create a negative impression in the minds of our co-workers or outsiders.

Q: The sales representative for a business partner has offered me tickets to a baseball game. Can I accept them?

A: Possibly. If the sales representative is inviting you to attend the game with him/her, this may constitute a business function and may be appropriate. If the face value of the ticket is unclear or is above $250.00, follow the guidelines provided above for attending Social Events with a business partner. If the sales representative is not attending the game, then the tickets would be considered a gift and must meet our standards for accepting gifts of "nominal" value.

Fraternization

What To Know

While all of us have the right to associate freely and pursue personal relationships with our colleagues, a romantic, intimate, financial or family relationship in the workplace may create an uncomfortable work environment for others. It may also create – or appear to create – a conflict of interest if we have such a relationship with a subordinate or a supervisor.

What To Do

Associates in such relationships must use tact and good judgment. If the relationship is with a direct or indirect subordinate or supervisor, or with an employee, officer, owner, or director of a current or potential business partner, we must promptly tell our supervisor or HR representative, who will consult with the Law Department to determine if some action is needed.

Other Employment

What To Know

A conflict of interest exists if an associate works for or receives compensation for services from any competitor or current or potential business partner of the Company.

What To Do

An associate must not provide any services for a competitor or business partner for which he or she is paid either in cash or indirectly. ("Indirectly" includes a promise of future employment or other personal or family benefit). In addition, associates may not serve on the board or as an officer of another for-profit company, even if it is not a competitor or business partner, without the approval of the General Counsel of the Company.

All of us are encouraged to serve as a director, trustee or officer of non-profit companies in our individual capacities, but we must obtain the approval of our HR department before doing so as a representative of the Company.

Q: I need to make some extra money and I want to get a second job. Is this okay?

A: This may create a conflict of interest if your second job is with a competitor or business partner of our Company, or if it adversely affects your job performance. You should discuss any potential employment with your supervisor or your HR representative.

Being Honest... Company Assets and Information

Our Company's assets must be used, purchased or disposed of only for the Company's benefit. We are all obligated to protect the assets of the Company and use them appropriately.

In addition to merchandise, equipment, furnishings and other property, our Company's assets include Company information, the personal information of the Company's employees and customers, any work product we may develop in the course of our employment, and any business or financial opportunity that the Company could avail itself of.

Confidential Information

What To Know

Confidential information about our Company, its business, associates, customers and business partners should be protected. It can be used only to pursue the Company's business interests or to comply with the Company's legal or other obligations.

What is this confidential information? It could be business or marketing plans, pricing strategies, financial performance before public disclosure, pending negotiations with business partners, information about employees, documents that show social security numbers or credit card numbers – in short, any information, which if known outside the Company could harm the Company or its business partners, customers or employees or allow someone to benefit from having this information before it is publicly known.

Just as our Company requires that its own confidential information be protected, our Company also requires that the confidential and proprietary information of others be respected.

What To Do

In performing our duties, we as associates may have access to confidential information relating to our Company, its business, customers, business partners or our co-workers.

We are all trusted to maintain the confidentiality of such information and to ensure that the confidential information, whether verbal, written or electronic, is not disclosed except as specifically authorized. Additionally, it must be used only for the legitimate business of the Company.

Here are some simple rules to follow.

Confidential information should:

- Be stored in locked file cabinets or drawers and not be left where others can see it,
- Be clearly marked as confidential whenever possible,
- Be shared only with those who need to see it for Company business purposes,
- Not be sent to unattended fax machines or printers,
- Not be discussed where others may hear,
- Be shredded when no longer needed.

Always respect the confidentiality of the information of third parties. We must not use or disclose any of it except as authorized under a written agreement approved by our Law Department.

All associates must use this link to access, read and understand our Policy Regarding Confidentiality and Acceptable Use of Company Systems.

Insider Trading

What To Know

As associates, we may from time to time become aware of "material inside information." Associates must take care to avoid using "material inside information" for their own gain or to enable others to gain from it.

"Material inside information" generally means significant and confidential information about the Company's business (which may include information relating to its business partners) that has not been disclosed to the public.

Examples of material inside information include information not yet announced to the public relating to earnings and financial performance information, business deals or plans, a change in the dividend, a stock split, a merger or acquisition, disposition or consolidation, changes in directors or senior executive officers and changes in control. Information is considered to be "inside" or "nonpublic" information unless it has been fully disclosed to the public, such as, for example, through public filings with the SEC or issuance of Company press releases.

What To Do

We may not buy or sell (including through the exercise of stock options) any stock or other security (such as warrants, debentures, puts or calls), whether of the Company or another entity, on the basis of material inside information. Nor may we disclose such information improperly, either intentionally or inadvertently, whether during business hours or in informal, after-hours discussions.

Trading in Company stock (or in the stock of any other company) on the basis of material inside information could result in civil and criminal charges against the person executing the trade and/or the person who provided the information to the person who traded. In addition, it would subject the Company to embarrassment and potential liability.

Q: My wife told our neighbor that I was working late on an important acquisition. A week later we announced the purchase of a major business and our Company's stock price rose substantially. I learned later that my neighbor bought our Company stock before the public disclosure of the acquisition. I never had any conversation with this neighbor directly. Have I violated our Company policy?

A: Yes. By telling your wife, who then told your neighbor, about the nature of the assignment you were working on, you indirectly tipped your neighbor. Our Company takes a very serious view of such violation. So do the federal and state authorities. You should discuss the situation with the Law Department promptly.

Information Disclosure and External Communications

What To Know

Securities laws and stock exchange regulations regulate when, how and to whom our Company should disclose material inside information.

In order to comply with these regulations, our Company has strict guidelines for the release of material inside information to the public. Additionally, only a few associates are specially authorized to discuss any Company information with the media or the investment community.

What To Do

We must follow all Company policies governing the public disclosure of material information about the Company. Further, we must not

- discuss our Company or its affairs with the media, investors, financial or industry analysts, outside consultants, on Internet chat pages or in public forums, or
- use Company information in presentations to external audiences, such as college groups and industry conferences,

without obtaining specific approval from our Corporate Communications Department, Investor Relations Department or the Law Department.

Use and Protection of Personal Data

What To Know

The Company has certain personal data of its present and former associates, customers and vendors. It respects the privacy of this personal data and is committed to handling this data responsibly and using it only as authorized for legitimate business purposes.

What is considered personal data? It is information such as names, home and office contact information, social security numbers, driver's license numbers, account numbers and other similar data.

What To Do

We have a strict obligation to use such personal data in a manner that:

- respects the privacy of our co-workers and our Company's customers and vendors,
- complies with all applicable laws and regulations, and Company policies,
- upholds any confidentiality or privacy obligations of the Company in its contracts.

In addition, we must follow all policies and measures adopted by the Company for the protection of such data from unauthorized use, disclosure or access. If any of us becomes aware of any instance of data being accessed or being used in an unauthorized manner, we must report it immediately to our technical support service (TSS) representative or the Law Department.

All associates must use this link to access, read and understand our Company's Associate Data Security Policy.

Q: I am a RTW buyer. My vendor rep asked me for information about our customers and further asked if the vendor could put out forms in our stores asking customers to join the vendor's email list. Is this OK?

A: No. We generally don't share customer information with our vendors or let them collect customer information themselves in our stores. If you get such a request, inform your DMM or GMM, who will contact the Law Department for guidance.

Q: I am the manager of the men's wear department in a high volume store in New York. One of my successful sales associates asked if he could keep in his clientele book the contact and account information for certain clients who rely on him to ring up merchandise for them because they are too busy to come into the store. I am concerned that if I do not permit the associate to do this, we will lose valuable sales.

A: The Company recognizes the value of such client relations and customer service. However, the Company has strict guidelines on the protection and use of customer information. Our Company has provided both tools and guidance to our sales associates to help them to continue providing excellent service to their customers, while at the same time protecting their customers' personal information. You must immediately consult the policies that govern you and your associates and seek help from the Law Department to understand what is permissible and what is not.

Business or Financial Opportunities

What To Know

We as associates may discover during our employment a business opportunity that the Company may be interested in. All such opportunities belong to our Company and may not be diverted away for personal gain.

What To Do

If we know or could reasonably anticipate that the Company would have an interest in pursuing a business or financial opportunity we should not try to take advantage of that opportunity for ourselves or divert it to any other party.

Protection and Use of Company Assets

What To Know

Company assets belong to the Company. We must protect them and use them only for Company business.

Associates must not use merchandise, intellectual property, data, supplies, samples, software, equipment, fixtures and other assets of the Company for personal benefit.

Company computers, for example, are intended for Company business use. Only limited personal use is allowed. An associate's use of Company equipment, Internet access or email or voice mail systems is not private. The Company reserves the right to monitor our use, consistent with applicable laws.

Theft, fraud, carelessness and waste of Company assets directly affect our reputation and profitability.

What To Do

We should all protect our Company's assets by guarding against and reporting not only any suspicion we may have of theft or fraud, but also any waste or misuse we may observe.

We must not copy or inappropriately use software licensed to our Company, download unauthorized software onto our Company computers, or use our Company's trademarks or copyrights except as authorized by Company policy.

Similarly, we should not use Company assets, including merchandise, or funds for illegal, unethical or otherwise improper purposes. For example, we must not seek to advance the Company's business with any governmental authority by means of bribes or payments to any third party.

Q: Is it okay to take home samples or defective merchandise?

A: No. It is not ok, unless it is purchased in a Company-sponsored sample sale.

Q: I sometimes email my spouse to make personal plans, such as who will take the kids to their after-school activities. Am I allowed to use the Company's computer for this?

A: Yes, as long as personal use is reasonable and does not interfere with your work.

Q: I helped a co-worker duplicate a software application for the business he runs from his home. Did we violate Company policy?

A: Yes, you both violated Company policy by misusing a Company asset. In addition, the copying may have violated the terms of the license agreement under which the Company acquired the software. This creates potential liability for the Company under the license agreement as well as under federal copyright laws. And, you too can be personally liable under applicable laws.

Accuracy and Protection of Company Records

What To Know

Our Company's books and records must be clear and accurate, and must fairly reflect our Company's business transactions and assets. All our public disclosures must be full, fair, accurate, timely and understandable.

Accurate records are essential to conducting our business successfully. They are also the basis on which we make the required financial disclosures and other public statements about our business, financial condition and results of operations.

For these reasons, we maintain a comprehensive system of internal accounting practices and controls that is designed to help us meet our objective.

In addition, all Company records, in whatever format or media they exist, must be retained in accordance with the policies contained in the Company's Records Management Program.

What To Do

All Company accounting policies and internal controls must be followed. Some of these internal controls govern who may sign contracts that bind our Company and who has authority to incur expenses on behalf of the Company and to what limits. We must follow these controls strictly.

Additionally, we all must cooperate fully with our internal and external auditors. We may not, directly or indirectly, take any action to coerce, mislead or fraudulently influence any accountant or auditor engaged in an audit or review of our Company's records or procedures.

There is no tolerance for any deviation from this policy

If any of us becomes aware of any such wrongful behavior, or inaccurate recording or improper reporting of the Company's information, we should promptly report these matters to our immediate supervisor. If we believe in good faith that any such wrongful behavior, inaccurate recording or improper reporting is sanctioned by our immediate supervisor, it should be reported to a senior level manager, to your HR representative, to the Law Department, or through ComplianceConnections.

In addition, if we become aware that the procedures for collecting and reporting information have not been strictly followed, or are flawed, we should similarly report that fact, even if that failure has not resulted in any inaccurate public disclosure.

If any of us has questions about accounting, internal accounting controls or auditing matters, we may submit them to the Audit Committee of the Board (which you may do anonymously and confidentially) through a secure website, at **http://www.[redacted]com/corporategovernance.** The Audit Committee will consider and act upon any questions and concerns regarding accounting, internal accounting controls or auditing matters submitted to the Audit Committee.

All Company records must be retained for the periods specified in the policies contained in the Company's Records Management Program, which can be accessed on the Company's intranet site's homepage by typing "[redacted]" on the address bar. If we are unable to access the document through the intranet, we may seek guidance from the Law Department.

Further, if we are told or otherwise become aware that certain records, whether in paper, electronic or other form, may be relevant to pending or anticipated legal action, they must not be destroyed without the approval of the Law Department.

Being Responsible... Legal Compliance and Social Responsibilities

Our Company is committed to conducting its business in full compliance with all applicable laws. This requires that we avoid not only any action that is clearly illegal, but also any action that may be technically legal, but is inconsistent with our core principle of "Integrity Always."

Our Company also embraces its social responsibilities and seeks to support and enrich every community in which we work and live.

Being Responsible... Legal Compliance

It is not possible to cover all the laws that govern our business. However, each of us must recognize that certain laws apply to our jobs, and we must become familiar with them. When we are not sure if a particular action would violate applicable laws or our policies, we should ASK our Law Department. The sections below discuss a few principal laws that apply to our business.

Antitrust

What To Know

Antitrust laws are intended to promote vigorous competition. They prohibit agreements that seek to limit or restrain trade.

Our Company is firmly committed to competing fairly and ethically. It believes that a free market economy is in the best interest of both our customers and our Company.

What To Do

We may not enter into or try to enter into agreements, understandings or communications with competitors, whether written or unwritten and whether directly or through third party intermediaries, on matters such as prices, markups, markdowns, and any other terms or conditions on which we do business. Any such attempt on our part would not only violate the law, but is a bad business practice.

We must scrupulously avoid every situation, meeting, communication or conversation, which could be construed as involving an attempt to reach such an agreement.

Agreements with business partners, such as vendors, regarding the retail prices at which our Company will sell that vendor's merchandise are prohibited. We must avoid agreements that specify the retail prices of marked down or clearance merchandise or the dates on which those prices will go into effect.

It is permissible to discuss markdown support, but we may not agree to sell an item at a certain price in exchange for a markdown allowance.

While it is not practical to discuss here all the "Dos and Don'ts" under Antitrust and Fair Competition laws, the following are helpful guides.

- Do compete vigorously, but ETHICALLY,
- Do not make agreements with respect to pricing with any business partner (vendor),
- Do not discuss any competitor's pricing, clearance or markdown practices with a business partner,
- Do not engage in activity with a vendor or competitor that seeks to limit the vendor's product distribution practices or control market prices,

- Do not induce a business partner to breach an existing agreement it has with a third party, although asking for an exclusive on a newly introduced item is permissible,
- Do inform all current and potential business partners of our Company's commitment to maintaining the highest ethical standards as it competes vigorously to provide the best products at the best prices for its customers.

All merchants and planners must use this link to access, read and understand our Company's Antitrust Guidelines.

Q: I am friends with some buyers of one of our Company's competitors. When I see them at trade shows, conferences or other events we often end up having lunch or dinner. We talk about industry trends, other retailers and other general topics. Is this a problem?

A: You should use caution in these situations. Do not discuss our Company's pricing, relationships with business partners, markup/markdown practices or other business practices or those of the competitor. If any anticompetitive topics come up in the conversation, you should refuse to participate and leave the conversation immediately.

Intellectual Property

What To Know

Trademarks, trade names, copyrights, trade secrets, rights of publicity and other similar proprietary information are considered intellectual property. Our Company owns many valuable intellectual property rights, such as our trademarks INC and Alfani.

Our Company may lose its rights in the intellectual property that it already owns, or may not acquire rights in property that it wishes to own if we fail to comply with certain laws.

Our Company also has the right to use the intellectual property of certain business partners under agreements. American Rag is one such example.

If we violate the terms of these agreements, our Company may not only lose the right to use the licensed intellectual property, but may also be subject to substantial damage claims.

We must use our Company's or a business partner's intellectual property only as authorized.

What To Do

We may use the intellectual property of the Company only for the benefit of the Company in accordance with the prescribed procedures.

Similarly, if and when the Company is permitted to use the intellectual property of its business partners, we all should follow the reasonable usage guidelines provided by the business partner.

We must not use the intellectual property rights of others without their permission.

We must not provide to or accept from third parties any proprietary information or the right to use intellectual property without a written agreement that is prepared by our Law Department.

If any of us develops a discovery, invention, concept or idea in the course of our employment with the Company, the Company owns it. We should assist the Company's lawyers in documenting the Company's ownership.

Advertising

What To Know

Our Company's goal is "truth in advertising."

Our Company is committed to earning and keeping the trust of its customers by advertising in a clear and accurate manner.

Our Company's policy is to comply with all applicable laws, including those that govern pricing, product information, product availability and phone and mail order rules, among others.

What To Do

In all our sales and advertising practices, we must be mindful that our Company competes on the merits of its products and services.

Our Company's advertising must be clear, accurate and helpful to our customers.

We must follow all our Company's advertising policies and guidelines.

When we say something about the products or services our Company sells, we must be able to substantiate it. That means we must have proof of what we say, before we say it. This is true even if we are just passing along what our vendor says about its merchandise.

All associates employed as merchants or planners or who work in the Marketing Organization must use this link to access, read and understand the Company's Retail Advertising Guidelines.

Product Integrity and Purchasing Practices

What To Know

Our Company acts upon its value "Customers First" by selling quality products and standing behind them.

Our Company's policy is to comply with all applicable laws governing production, testing, packaging and labeling of products.

When our Company procures products from vendors, it requires these vendors also to do the same, regardless of country of origin. Additionally, our Company is committed to fair purchasing practices and requires vendors to adhere to the Company's Vendor Code of Conduct.

Our customers trust us to take all the necessary safeguards to ensure that the products we offer for sale meet high standards for safety and quality, and are manufactured in a socially responsible manner.

What To Do

We must safeguard our Company's reputation and goodwill with our customers by ensuring that the products and services we sell are safe.

Product safety is the responsibility of each one of us.

Buyers and product developers must make every effort to ensure that the products or services our Company sells perform as we claim they do and are manufactured as we state they are.

Store associates must identify potential safety and quality issues and follow Company procedures to report them promptly.

In addition, store associates must follow Company guidelines in cases of returns or recalls of allegedly unsafe or defective products.

In all aspects of sourcing, production, sale investigations of claims or recalls, we should partner with our Law Department to ensure that we are in compliance with all applicable laws.

All associates in

- stores, including store managers, general and department managers and their staff,
- buying organizations, including buyers and planners, product developers and designers, as well as other associates who have or are likely to design or produce merchandise such as associates on special events teams or Corporate Marketing,
- customer service, including MCCS' Presidential and Retail Groups and Corporate Communications, and
- risk management, including claims adjustors

must use this link to access, read and understand our Company's Product Safety Policy and Procedure.

Government Investigations and Contacts

What To Know

Our Company's policy is to cooperate with appropriate governmental requests or investigation, and to comply with all applicable laws governing contacts with government officials. Our Law Department is responsible for managing all such requests, investigations or contacts and providing truthful and accurate information.

What To Do

If we are asked to provide information – verbal or written – for a government investigation, or if a government representative appears at our workplace, we must promptly notify our Human Resources representative or the Law Department and obtain approval for the release of any information. We must not obstruct, influence, mislead or impede the investigation.

Any contacts with government officials for the purpose of influencing legislation, regulations or decision-making may constitute lobbying. We must not contact or communicate with any government official for such purpose on behalf of the Company without having specific authorization. If a need arises to do so, we must contact the Law Department.

Political Activities – The use of Company funds for political activities is regulated heavily at the state and federal levels. Any questions regarding corporate political activities should be directed to the Group Vice President, Legislative Affairs.

Being Responsible... Social Responsibilities

Environmental and Social Responsibilities

What To Know

Our Company cares about the environment and complies with all environmental protection laws.

Our Company has implemented many sustainability programs that go several steps beyond the requirements of the law and are aimed at preserving and protecting the environment. These steps include measures to conserve energy, prevent the waste of valuable resources like water and electricity and recycle products.

Our Company seeks to live up to its value of "Giving Back" by caring for and enriching every community in which it participates through us. Our Company's long-established tradition of giving back to our communities is orchestrated through various Company-sponsored community service programs, such as "Partners In Time".

What To Do

We must demonstrate our Company's commitment to preserving and protecting our environment in all our actions for the Company, including by complying with all applicable laws.

We must learn about our Company's sustainability programs and make a conscious effort to not waste valuable resources and dissuade others from doing so.

Additionally, our actions must uphold and demonstrate our Company's goal of giving back to every community in which we live or do business.

macy's inc

EEO & Anti-Harassment Policy

Equal Employment Opportunity

Macy's Equal Employment Opportunity Policy prohibits any form of discrimination in the workplace. The Company is committed to treating all associates equally on the basis of job-related qualifications, abilities and performance, regardless of race, ethnicity, age, religion, gender, sexual orientation, gender identity, national origin, physical or mental disability, genetic information, military status, marital status, medical condition, or any other category protected by law or unrelated to job performance.

As part of the Macy's EEO & Anti-Harassment Policy, all associates should enjoy a working environment free from all forms of discrimination and harassment. It is against the Company's policy for any associate to harass another associate based on race, ethnicity, age, religion, gender, sexual orientation, gender identity, national origin, physical or mental disability, genetic information, military status, marital status, medical condition, or any other category protected by law. Therefore, the Company will treat harassment as it does any other form of employee misconduct and it will not be tolerated.

Sexual Harassment

No associate, male or female, should be subjected to unsolicited and unwelcome sexual advances or conduct. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature where:

(i) Submission to such conduct is made either explicitly or implicitly a term or condition of an associate's employment;

(ii) Submission to or rejection of such conduct by an associate is used as a basis for employment decisions affecting such an individual; or

(iii) Such conduct has the purpose or effect of negatively interfering with an associate's work performance or creating an intimidating, hostile, or offensive working environment.

All associates are prohibited from offering, promising, or granting preferential treatment to any other associate or applicant for employment as a result of that individual's engaging in or agreeing to engage in sexual conduct. Likewise, all associates are prohibited from using any other associate's or applicant's refusal to engage in such conduct as a basis for an employment decision affecting that individual or others.

An intimidating, hostile, or offensive working environment may be created by such circumstances as pressure for sexual activities, unwanted and unnecessary physical contact with another associate, verbal abuse of a sexual nature, the inappropriate use of sexually explicit or offensive language or conversation, or the display in the workplace of sexually suggestive objects or pictures. This would include the placement of offensive materials on walls or bulletin boards or the circulation of offensive materials received electronically through the Company's email or other electronic systems.

This and other sets of circumstances provided in this policy are not exhaustive; they are intended as guidelines illustrating violations of Macy's Anti-Harassment policy.

Other Forms of Prohibited Harassment

Similarly, a racially hostile working environment may be created by circumstance such as verbal abuse based on race, including the use of racial epithets, racial slurs, racial remarks, racially derogatory terms, and racial jokes or insults.

Other hostile work environments may be created by the use of epithets, slurs or derogatory terms, insults, jokes, or teasing based upon another's ethnicity, age, religion, gender, sexual orientation, gender identity, national origin, physical or mental disability, genetic information, military status, marital status, medical condition, or any other category protected by law.

Macy's will not tolerate harassment of any type based on race, ethnicity, age, religion, gender, sexual orientation, gender identity, national origin, physical or mental disability, genetic information, military status, marital status, medical condition, or any other category protected by law. Engaging in harassment of others will lead to discipline, up to and including termination of the associate violating Macy's Anti-Harassment policy.

Complaint Procedure

Any associate who believes they have been subjected to or observed such behavior by another associate, either in or outside of the workplace, must report the situation immediately to:

- A manager or supervisor;
- A Human Resources representative;
- ComplianceConnections at 1-800-763-7290 or www.[redacted]com; or
- Solutions InSTORE at 1-866-285-6689

If a satisfactory response is not received from the person or office to whom a complaint was made, the associate should bring the complaint to the attention of another person or office listed above.

Macy's takes all complaints of harassment very seriously. All complaints will be promptly investigated and handled as confidentially as a thorough investigation allows.

Remedial Action

Following a complete review and thorough investigation of the complaint, appropriate remedial action will be taken and communicated to the parties involved. Any associate found to have engaged in harassment in violation of Macy's Anti-Harassment policy, will be subject to discipline, up to and including discharge.

No Retaliation

Retaliation in any form against an associate or applicant who complains of discrimination or harassment, or against anyone who participates in the investigation of such a complaint, is strictly prohibited and will itself be cause for disciplinary action up to and including discharge. Any form of retaliation must be reported immediately pursuant to the Complaint Procedure outlined above.

Employee Rights and Responsibilities Under the Family and Medical Leave Act

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures

For additional information:

1-866-4US-WAGE (1-866-487-9243)
TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

Vendor-Paid Trip Policy

Macy's may accept reimbursement (or payment in the first instance) from vendors for all charges relating to a Macy's associate's attendance at a vendor-sponsored business event under the following circumstances:

- The purpose of the event is business and any recreational events sponsored by the vendor in connection with the event are incidental.
- Types of business-related events covered by the policy are seminars or education programs relating to a new vendor product, a new season's product line, a vendor manufacturing process or a vendor trade show.
- The events must be held at the vendor's place of business (or in the same general geographic area in which the vendor is located) and must be held in the continental United States.
- Trip-related charges that are reasonable or payable by the vendor are airfare (coach fare); lodging (at not more than the highest per night lodging rate under the Macy's travel guidelines for the city in which the event is held or, if such city is not covered by such guidelines, by such rate under the guidelines for the city covered by the guidelines that is closest and most comparable in size to the city in which the event is held; reasonable meal and recreation expenses; and local transportation.
- The trip must be approved in advance in writing by the senior executive of the organization whose associates are attending the event.
- Only those Macy's associates for whom the event has demonstrable, direct business relevance may attend the event.
- The portion of the event attended by the Macy's associate may not exceed three business days (any part of a day during which the associate attends a business meeting associated with the event is considered one business day).
- The Human Resources Department in every organization will maintain a written record of all such vendor trips taken during a fiscal year, recording all the particulars thereof (names of attending associates; venue, duration and purpose of trip; and amount of charges by associate by type (airfare, lodging, meals, local transportation, recreation) reimbursed by vendor) and submitting the report to the Office of Compliance & Ethics in the Law Department within sixty (60) days following the end of the fiscal year.
- Any exception to the foregoing policy must be approved in advance in writing by the General Counsel.

Policy Regarding Confidentiality and Acceptable Use of Company Systems

Purpose

While working at or with [redacted] or one of its subsidiaries (the "Company"), you may have access to certain non-public information ("Confidential Information" or "Internal Use Only" Information, as those terms are defined in the Macy's Information Security Policy, collectively referred to as "Confidential Information" in this Policy, unless more specifically defined for the purposes of particular requirements). In addition, you may have access to Company systems and/or technology (including but not limited to computers, the computer network, voice mail, email, landline telephones, cellular telephones, fax machines, pagers, handheld email devices, and personal digital assistants (PDAs)) and systems connected to the Internet and/or intranet (collectively, the "Systems"), that are used to carry out the Company's business.

This policy governs your use of, and access to, all Confidential Information and the Systems either as an employee of the Company or as an independent contractor or licensee who provides services to the Company and/or uses the Systems. By using or accessing Confidential Information or the Systems, you are agreeing to abide by this policy, as well as all other applicable Company policies.

This policy may not address every issue or question that may arise. You must exercise good judgment, and if you have any questions or concerns (e.g., regarding whether information is confidential or materials are inappropriate or offensive), you should resolve them with your Company supervisor.

Your Responsibility

It is your responsibility to read and to follow this policy, as well as the Macy's Information Security Policy. If you violate any of these policies, you may be subject to disciplinary action, up to and including termination. In addition, access to the Systems may be suspended or terminated without prior notice.

A. CONFIDENTIALITY STANDARDS AND PROCEDURES

The following standards and procedures apply to your use of, or access to, all Confidential Information.

1. All Non-Public Information is Sensitive

Any information that is not generally available to the public that relates to the Company or the Company's customers, employees, vendors, contractors, service providers, Systems, etc., that you receive or to which you are given access during your employment or while you are performing services for the Company is classified as "Confidential" or "Internal Use Only" under the Macy's Information Security Policy. As is set forth in the Macy's Information Security Policy, internal access to Confidential Information should only be granted on a "need to know" basis, and such information should not be shared with third parties without prior approval from your Company supervisor and consultation with the Law Department.

2. Obligations to Maintain Confidentiality

The Company is often obligated under its contracts to maintain information received from or relating to third parties as confidential. Such information also constitutes Confidential Information for the purposes of this policy. In these circumstances, such information may not be disclosed or discussed outside the Company except with prior approval from your Company supervisor and consultation with the Law Department. Disclosing Confidential Information may cause serious and irreparable injury to the Company, and these policies apply to you both during and after your employment or termination of your relationship with the Company.

If you have any questions regarding whether information is Confidential Information, you should treat it as Confidential Information and seek guidance from your Company supervisor.

3. Use and Protection of Personal Data

Company maintains certain information regarding its present and former associates, customers and vendors. Company respects the privacy implications of this data where it includes personally-identifiable information ("Personal Data"). Personal Data includes names, home and office contact information, social security numbers, driver's license numbers, account numbers and other similar data. Company is committed to handling Personal Data responsibly and using it only as appropriate for legitimate business purposes. This commitment requires that all Company employees, contractors, and third parties who are granted access to Personal Data by Company follow all policies adopted by the Company for the protection of such data against unauthorized use, disclosure or access. Such policies, including those set forth in the Macy's Information Security Policy, may vary depending on the sensitivity of the Personal Data at issue.

Personal Data may not be shared with any third party without the written approval of your senior Sales Promotion executive or, for support organizations, your Chief Executive Officer.

4. Special Handling for Highly Sensitive Personal Data

You must not send or require others to send certain ("Highly Sensitive Personal Data") (including, but not necessarily limited to, social security numbers or other tax identification numbers, credit card numbers, bank account numbers or other account information, passport numbers, or medical information) over the Internet unless the connection is secure and the data is encrypted prior to transmission using the Company approved encryption method. Any transmission, storage, disposal, or other handling of Highly Sensitive Personal Data should be carried out in compliance with the Macy's Information Security Policy, which prohibits the storage of Personal Data on any portable removable storage device (including, but not limited to, USB drives, CDs, etc.). More information regarding storage can be found in Section A.7 - Confidential Data on Public Drives.

5. Sharing Email Addresses

Your email address itself is not considered confidential information but should only be shared with appropriate contacts outside the Company. Customer email addresses are considered Confidential Information, and should be not be shared with third parties without prior approval from your Company supervisor and consultation with the Law Department.

6. Email Confidentiality

When transmitting Confidential Information via email, be certain that it is only addressed to the intended recipients. Keep in mind that email may be readily printed or forwarded by the recipient, and be careful to only include content that is appropriate, business-related, and that is not likely to be misunderstood or taken out of context by the recipient or any others to whom it may be forwarded. Information subject to attorney-client privilege (i.e., communications with a lawyer about a legal matter) should be communicated by email only with appropriate disclaimers.

- A message subject to attorney-client privilege should include the following heading: "ATTORNEY-CLIENT COMMUNICATION: PRIVILEGED & CONFIDENTIAL".

If information is particularly sensitive (including Highly Sensitive Personal Data), it must not be communicated by unencrypted email. Instead, if email is the chosen method of communication, then such information should be encrypted prior to transmission using the Company approved encryption method. If you are uncertain of the appropriate method of communicating certain information, consult with your Company Supervisor or the Law Department.

Unless you have been instructed to keep messages for a legal matter, all voicemail or email messages no longer needed should be promptly deleted. For more information on email retention, email purges, and email standards, see Section C.3.

7. Confidential Data on Public Drives

Exercise caution when placing Confidential Information, sensitive data, or privileged documents on public drives since these drives may be available to anyone with access to that network. If you must store Confidential Information on a public drive, take steps to protect the document from being viewed or altered by unauthorized parties. This may involve password protecting the document, designating it as "read only," or placing a "write reservation" password on the document. Highly Sensitive Personal Data or privileged documents must not be stored on public drives.

8. Laptops, Cell Phones, Handheld Email Devices, and other Portable Devices ("Mobile Devices")

Caution must be exercised when communicating sensitive confidential information or information subject to attorney-client privilege over portable drives, including, but not limited to, laptops, cellular phones or handheld email devices. Storage of Confidential Information on Mobile Devices should be limited to those instances where such storage is justified by applicable business requirements, and where appropriate security controls, as established in the Macy's Information Security Policy, have been implemented. Mobile Devices may be lost or stolen, and the storage of sensitive information on such devices creates a security risk that must be mitigated. Highly Sensitive Personal Data should never be communicated using or stored on Mobile Devices.

9. Disclosure of Systems Security Methods

All information and documentation relating to Company security, including but not limited to Company security policies, procedures, audits and risk assessments, constitute Confidential Information. No such information may be disclosed or distributed to any employee without a "need to know" in the normal course of his or her assigned work duties. "Need to know" means that the person needs the information to carry out his or her job duties and, even then, only covers the specific pieces of information needed to do the job. Furthermore, no such information may be disclosed or made available to any third party, except with the approval of an appropriate senior Company executive (Vice President level or above).

B. COMPANY SYSTEMS

The Systems include all systems, applications, media and services that are

- Provided by the Company or accessed on or from Company premises, OR
- Accessed using any Company equipment or service, or via any Company-paid or Company-provided access methods (e.g., remote dial-up or VPN access), OR
- Used in a manner that identifies the individual with the Company (e.g., through a domain name or email address on the Internet that is tied to the Company)

Such Systems specifically include but are not limited to: hardware, software, computer networks, email, voice mail, phones, fax machines, intranet systems, and the Internet when accessed using Company equipment or any Company-provided access method.

C. ACCEPTABLE USE OF COMPANY SYSTEMS

This policy applies to your use of, or access to, any Systems. By accessing or using any Systems, you are agreeing to abide by this policy, as well as any additional policies or procedures that may be required by the Company.

1. Use of the Systems for Business Purposes

a. The Systems are provided to serve business purposes only. They should be used to further the Company objectives that fall within the scope of your duties as an employee, independent contractor or licensee.

b. Limited occasional use for personal purposes is allowed only if the System is used (i) responsibly, (ii) during your own personal time, (iii) without any expense, burden, or risk to the Company or the Systems, (iv) not in connection with an alternative business enterprise, for financial gain (other than in connection with employee benefits), or for any purpose that is illegal, inappropriate, or contrary to Company policies or procedures, and (v) with the approval of your Company supervisor.

2. No Expectation of Privacy When Using the Systems

You have no expectation of privacy when using the Systems, including voicemail, email, Internet, Intranet, and word processing. Subject to applicable laws, your use of the Systems may be monitored, and all information on the Systems may be monitored, accessed, duplicated, deleted or disclosed at any time without notice to you and without your permission. The Company further has the right to limit, block, monitor, remove, and/or record access by any employee, contractor, or licensee when using the Systems and when accessing any information on the Internet or Intranet.

3. Corporate Email Retention Policy, Automatic Deletion of E mail, and Your Obligations During Lawsuits

You must comply with the Corporate Email Retention Policy. Under that policy, emails are automatically deleted from the Systems after 60 days. If you have a critical business need to keep email for more than 60 days, you must move it to your Business Critical folder or print a copy. Items will be retained in the Business Critical Folder for 1 year from the date they are moved there. Use the Business Critical folder only for emails that are needed for critical business reasons (e.g., meeting notes for ongoing projects, budgets, etc.); do not use it as a storage device for non-critical emails. In the event that you are identified as someone who has information related to ongoing litigation, you will be instructed not to delete any emails related to that case, and the law department will place your email account on a separate litigation server to ensure that your emails are backed up and saved until they are no longer needed for that case. Following all instructions provided in such cases and preserving all records, including emails, is critical.

4. Systems Access Restrictions

a. Non-employee access to the Systems is restricted and may be given only for Company business purposes (e.g., for the development of software or an Intranet page) and only with appropriate approvals and the issuance of a separate user identification and password in compliance with the Macy's Information Security Policy.

   Any non-employee who is permitted access to the Systems must agree to abide by this policy and the Macy's Information Security Policy through signature or Company contract.

b. Except for authorized Company representatives, no person may access any other person's voice mail, email, files, or other Systems, and no person may use or access any Systems using another person's user id and/or password. However, in appropriate circumstances where there is a sound business need (for example, to access information needed for an internal investigation or to copy files after an employee is terminated), an Organizational Security Administrator may grant authorization to an appropriate executive to access another employee's voice mail, email, files, or other Systems. NOTHING IN THIS SECTION CREATES ANY EXPECTATION OF PRIVACY OR RESTRICTS COMPANY'S RIGHT TO MONITOR ANY USE OF COMPANY'S SYSTEMS AS DESCRIBED ELSEWHERE IN THIS POLICY.

c. When you are away from your computer, you must either log off or use the Control-Alt-Delete function to lock your computer and prevent any other person from accessing the Systems using your log on.

d. Accessing information, data, and/or files without a legitimate business reason and proper authorization is prohibited. You must not attempt to obtain unauthorized access to any Company System or any protected or restricted file or area on any Company System without approval from the Chairman, President, or CFO of Macy's Systems and Technology, or the General Counsel of the Company. Furthermore, the Systems may not be used to gain unauthorized, illegal, or improper access to any other computer, system, or Web site outside the Company. All access to Company information must comply with the Macy's Information Security Policy.

e. Vendors and independent contractors authorized to access the Systems may only access information on such Systems that has been specifically approved by Company management.

5. Password Management

a. Passwords are used to secure the Systems. Passwords are not intended to assure employees that messages or information on these systems will be kept confidential or private. The Company reserves the right to reset your password without notice and to revoke your access to some or all of the Systems at any time.

b. You must protect the confidentiality of your password and change it on a regular basis. You must change it immediately if you think the confidentiality of your password has been breached. You must not share your password with anyone else. In an emergency or when otherwise appropriate, your supervisor may have your password reset.

6. Restrictions Regarding Email and Internet Use

a. The Systems may not be used to access, create, post, upload, download, or send any information, files, programs, messages, email, or other material that may potentially be inappropriate, offensive, abusive, defamatory, disruptive, illegal, threatening, obscene, or harassing. In addition, Systems may not be used to create or transmit any information or files that may potentially contain sexual implications, racial slurs, or any comments that may offensively address age, gender, race, sexual orientation, religious or political beliefs, national origin, or disability. If you inadvertently access an inappropriate site or information, promptly notify your supervisor and HR representative in writing so that both you and they have documentation reflecting that your action was not intentional in the event that you later are asked about the site or information you accessed.

b. If you receive any emails from people inside or outside the Company (including, for example, unsolicited emails containing sexually explicit or derogatory materials) that you feel are harassing, offensive, threatening, or inappropriate, notify your supervisor and/or HR so that appropriate steps may be taken to stop such emails in the future.

c. No employee may send or authorize a third party to send marketing emails without prior authorization from Company's senior management. All marketing emails are approved by properly authorized executives using approved email service providers and following legal requirements for commercial email.

d. The Systems may not be used in a manner that overloads the Systems (e.g., by sending email to a large group of users unless appropriately authorized and required in the performance of your work duties).

e. The Systems may not be used for solicitations for commercial ventures, religious or political issues, or outside organizations, except with prior authorization from your CFO or appropriate senior public relations or HR executive.

f. The Systems may not be used to distribute or publish chain letters or copyrighted or otherwise protected materials. If you receive any chain letters, delete them and do not forward them to anyone else. They overload the Systems and may make others uncomfortable.

g. The Systems may not be used to participate in Internet discussion groups or chat rooms unless such participation is authorized and is related to your job.

h. Only the Macy's Corporate Communications Department and designated public affairs executives may make, or authorize others to make, public statements on behalf of the Company.

i. Do not send emails or other electronic communications that attempt to hide the identity of the sender or represent the sender as someone else.

j. Only employees who have a business purpose for using the Internet will be granted access, and that access may be limited. You may apply for Internet access using the designated electronic form.

k. Unless authorized by the holder of the copyright, no copyrighted information (e.g., news articles or pictures) may be transmitted or posted on or downloaded from the Internet. Similarly, all non-public information on the Company Intranet is considered Confidential Information and is subject to copyright protection; therefore, it may not be shared outside of the Company without appropriate authorization.

l. Any message or information you send by Company email or on the Internet/Intranet may identify you with the Company; therefore, all such communications must comply with this and other Company policies.

7. Restrictions on Hardware and Software Installation

Only authorized Macy's Systems and Technology (MST) personnel may purchase or authorize the purchase of hardware or software for any the Systems. Only authorized technical support personnel may install hardware, software, or shareware, or copy or delete any software from any Systems. In addition, MST must approve any direct software downloads.

All software and other equipment must be used in accordance with applicable licensing agreements and Company policies. Individual drives may be audited at any time to determine whether unauthorized software has been installed, and, if so, it will be deleted. If you are aware of any misuse of any Systems or software, you must report such misuse to your Company supervisor or MST.

8. Other Restrictions on Copyrighted Material

You may not download, copy from a CD or DVD, or otherwise transfer onto the Systems (including the hard drive of your Company-provided computer) any music, video or picture files or data that is protected by copyright. This includes but is not limited to MP3 files of songs, JPEGs of photographs (other than personal photographs), images from an outside websites, and video clips (other than video clips or streaming video provided by the Company or personal to you). Whenever you need such files or data to perform your job, you must ensure that you have all necessary licenses to any creative work you are transferring to the Systems and using. For assistance, consult with the Law Department.

9. Intellectual Property Rights

Any business procedure, software, program, system, application, Web page, methodology, design, drawing, or other creative work developed by you while you are working as an employee, independent contractor, or licensee at the Company is the property of the Company unless completed on your own non-work time and demonstrably unrelated, as determined by the Company in its reasonable judgment, to the subject and methodology of the areas of your employment, contract or license. The Company shall have the intellectual and other proprietary rights (including patent and copyright rights) in all such works, and you agree to protect the Company's intellectual and other proprietary rights in any such works. You agree that each such work shall be a "work made for hire" under the United States Copyright Act of 1976, as amended. If any such work does not qualify as a "work made for hire," you hereby assign to the Company, absolutely and forever, all rights, title, and interest in and to all copyrights, patents, trade secrets, and other proprietary rights in and to such works throughout the world and agree to record such assignment and enforce such rights.

10. Suspected Computer Viruses

If you learn of any computer virus or other IT security problem, you should contact the MST Help Desk to address it. If you receive a suspicious email and are concerned that it may contain a virus, do not open it; delete it.

11. Caring for Company Equipment

a. You must maintain the Systems and equipment in good working order. You must contact the MST Help Desk to address any problems or for necessary maintenance.

b. If possible, label handheld equipment with your contact information (if it's not otherwise obvious) so that it may be returned to you if you misplace it.

c. When you leave the Company, you must return all Company-provided equipment, as well as Systems access mechanisms or software

12. Reporting Loss of Equipment or Security Breaches

a. You must protect the physical security of the Systems and equipment and must immediately notify your Organizational Security Administrator and organization technical support if you lose or misplace any Company equipment (e.g., a laptop, handheld email device, storage device or cell phone). If any personal information was stored on or accessible through those devices, our Security Incident Reporting Procedure must be followed.

b. If you suspect or learn of any breach or vulnerability in our Systems security (e.g., someone has or potentially has inappropriately accessed any Company System or data) or if you suspect or learn of any loss of customer, employee or vendor information (whether that information is on paper or on a System), immediately report it to your Organizational Security Administrator using the Macy's Security Incident Reporting Procedure. Immediate action is necessary to investigate the incident, address any issues and restore the integrity of our Systems.

13. Blogging and Social Media

You may not blog or access social media sites while on Company time, unless doing so is part of your job responsibilities. And while what you do on your own time generally is your affair, your conduct, even while off-duty, can reflect on and affect the Company. Keep in mind that the rules regarding safeguarding Confidential Information and professional conduct apply. Do not use or disclose any Confidential Information. Also, never make discriminatory, retaliatory, harassing, abusive or obscene comments or engage in copyright infringement, libel or slander, stalking, or threatening behavior or violate others privacy rights with respect to the Company, its assets, information, associates, business partners or vendors. You may be invited to become a friend or associate of someone on social media sites. Feel free to remain silent or say no. You may be asked to provide a testimonial for a friend or associate. If you choose to do so, make sure you are clear that you are expressing your own views and opinions, and that you do not speak on behalf of the Company. And keep in mind that only authorized individuals may speak for the Company on social media. If you choose to interact with "company postings" on social media sites on your own time, be upfront about who you are, but also be clear that you are expressing your own opinion, and are not speaking for the Company.

D. DISCIPLINARY ACTION

Any employee, contractor, or licensee who violates any of the standards, policies, or procedures contained in this Policy may be subject to disciplinary action, up to and including termination of employment or termination of relationship with the Company.

Associate Data Security Policy

In the course of conducting business, you may need to collect and use associates' sensitive personal information. Sensitive personal information refers to data that can be used (or misused) to validate a person's identity or commit fraud, e.g., the associate's name along with his or her home address, telephone number, social security number, date of birth, driver's license or other government-issued identification/passport number, bank, credit or debit card account number, or mother's maiden name. The Company recognizes and requires that reasonable protections must be taken to maintain the confidentiality of sensitive personal information. To that end, the following guiding principles serve as the standards and procedures that you must apply when handling such information. However, these guiding principles cannot address every situation or issue. In some instances, therefore, you must exercise good judgment, and partner with your supervisor and/or Human Resources as needed.

Guiding Principles about Collection and Use of Information

- Only gather sensitive personal information if necessary for an express business purpose. For example, a business license application that specifically requests the personal information of an individual. Do not provide more information than an application may require by furnishing a template that includes sensitive personal information that is not requested, or that includes the names of more individuals than requested. This also means reducing the number of officers or agents listed on certain filings, if appropriate.
- Human Resources should be notified in advance of the initial request to gather sensitive personal information from an associate. If appropriate, Human Resources should contact the associate to explain why such collection is necessary.
- Prior to collecting and/or distributing sensitive personal information, determine whether the process can be completed without the information. For example, if a third party process requires the disclosure of sensitive personal information, contact the third party to determine if the Company can be excused from the disclosure, or if alternate information may be provided instead.
- Do not collect or transmit sensitive personal information electronically (i.e., via Lotus Notes, the Internet) unless the connection is secure. Do not move secured information to an unsecured, unprotected format.
- Personal information should be shared on a business "needs-to-know" basis only.

Guiding Principles about Maintenance of Information

- Maintain any hard copy records containing sensitive personal information in a manner that ensures confidentiality. For example, records should not be kept in unsecured areas such as desktop or unlocked file cabinet; instead, records must be stored in locked file cabinets or locked offices. If records are not in a locked cabinet, then when leaving the office, even if only for a short while, the office should be locked.
- Maintain any electronic records containing sensitive personal information in a manner that ensures confidentiality. For example, electronic records should be stored on a non-public drive and should be password protected.
- As a customary practice, sensitive personal information should not be stored on portable electronic devices, including, but not limited to, laptops, blackberries or memory sticks. In those rare instances where it is necessary to receive and/or store such information on a portable device, you must apply appropriate safeguards to protect the data and the device. If the device is lost or stolen, you must immediately notify Human Resources.
- Access to and use of any records containing sensitive personal information should be restricted to those on a "need-to-know" basis.

Guiding Principles about Storage and Destruction of Information

- Ensure that records with sensitive personal information that are sent to off-site storage are properly secured. For records containing personal information, on the packaging label designate the department as Confidential Information Activity. Also, ensure that the containers are properly sealed prior to shipping off-site.
- Follow the Company's record retention guidelines and timely destroy all records containing sensitive personal information.
- When sensitive personal information is destroyed, ensure that it is totally destroyed and not recoverable. Paper records must be shredded. Electronic records must be purged from computers, servers and back-up drives. The disposal of sensitive personal information as ordinary garbage, without first shredding, burning, pulverizing, erasing or otherwise destroying the material or medium, is prohibited.
- If the sensitive personal information of multiple associates is maintained in a single electronic document, e.g., a spreadsheet, if an associate's employment ends, the sensitive personal information of that individual should be deleted from the document. Individual's names should also be removed if the person withdraws consent and as officer slates change.

Guiding Principles about Loss, Theft, Improper Access and Inadvertent Disclosures

- In the case of any loss, theft, improper access or inadvertent disclosure of sensitive personally identifiable information, you should immediately notify Human Resources. You may learn of an inadvertent disclosure or theft by a third party, e.g., a letter from an agency to whom the Company transmits personal information. You may also become aware of missing files. If you believe that data within your control has been compromised, you should notify Human Resources immediately.
- If a portable electronic device containing sensitive personal information is lost, stolen or misplaced, notify Human Resources immediately.

Antitrust Guidelines

[redacted] and its subsidiaries and organizations ("Macy's" or the "Company") are committed to strict compliance with the antitrust laws. The Company provides these Guidelines to each of its merchandising associates ("we" or "us" or "you") each year.

I. General Policy

Our Company competes vigorously and fairly, on the basis of its independent business judgment, and complies strictly in all respects with all applicable laws, including the antitrust laws, in each case willingly and without exception.

Each of us should read, fully understand and comply with these Guidelines. We should read them as often as necessary and consult with the Law Department concerning any matter we do not understand. At least once a year, each of us must certify to the Chief Executive Officer of our organization or subsidiary that we understand these Guidelines. These Guidelines

1. set forth some basic principles that we must follow in dealing with resources;
2. are not intended to restrict us from engaging in normal business related conversation and activities with resources regarding merchandise assortments, merchandise price, resource in-store support, resource advertising support, etc., so long as we act in compliance with the current Guidelines;
3. do not summarize all of the antitrust rules (additional antitrust rules can affect us, and if we have any doubt as to the legality of a proposed course of action, we should consult with the Law Department before taking that action); and
4. prohibit some conduct as a matter of prudent policy that may not under all circumstances violate the antitrust laws... however, we believe that it is important to avoid even the appearance of an antitrust problem.

II. Consequences of Noncompliance

Violating the antitrust laws can result in very severe consequences for you and for the Company.

1. If **you** were to authorize, order or participate in conduct that violates antitrust law, **you** could be guilty of a **felony** and could be subject to
   a. imprisonment for up to ten years,
   b. a fine of up to $1,000,000,
   c. an injunction that could limit your conduct,
   d. damage to your reputation, and
   e. being fired from your job.
2. If the **Company** were to violate antitrust laws, it could be guilty of a **felony** and potentially subject to
   a. a fine of up to $100,000,000,
   b. a penalty of treble damages,
   c. an injunction that could limit our conduct (and even limit conduct that would otherwise be lawful, thereby putting us at a competitive disadvantage), and
   d. damage to the Company's reputation.

In addition, antitrust litigation can be extremely burdensome and costly in terms of executive time and legal fees. Antitrust actions could also be harmful to your business reputation, to our business reputation and to employee morale.

III. Avoiding the Appearance of an Antitrust Problem – Emails

Following the letter of these Antitrust Guidelines is not enough. Following the spirit of the Guidelines is not enough either. Each of us has to also make sure that the things we do and the communications we send while we engage in legitimate business activities cannot be misinterpreted by anyone else as violating either the letter or the spirit of the Guidelines, either at the time we do them or afterwards. Emails are one of the most common ways that people risk being misinterpreted or risk having their conduct misconstrued.

We conduct more and more business electronically by email. As a consequence, we create an email trail on almost every transaction, and although we may think we have erased an email, inevitably a copy of that email still exists on a Macy's server or on someone else's server. We often print and/or forward emails to others without regard to their content. The costs of retaining emails and ultimately searching and producing such emails in investigations and litigation are enormous and growing. Moreover, we develop our own language or short hand way of communicating. While we and the people we email understand the short hand communications at the time, the short hand communications can lead, in hindsight, to false conclusions or the appearance of unlawful activities. If any of us receives such an email, or if we think that we may have sent such an email, we should immediately contact the Law Department. We should not respond to such an email we received and should not try to correct such an email we have sent without, in either case, seeking legal advice immediately.

1. We should think about any email we send or receive – think about whether it is clear and complete and whether it says everything it needs to say so that it cannot be misinterpreted or misconstrued – even by someone looking at it after the fact who has not been involved in our back and forth or give and take. We should be careful what we write in an email. For example, a resource may email you that the "break date is August 15," which appears to suggest that you and that resource have agreed upon a break date when in fact the resource simply is advising you that mark down money is available to support lowering the retail price. It is important that you refer such an email to the Law Department so they can assist you in drafting or responding to such email and that your message is clear that you are not reaching an agreement on sensitive areas such as the retail price or break date.

2. We should make sure that any email between any of us and a resource is limited to just us and the resource. It is so convenient today for a resource to email you and other retailers at the same time. But such an email poses an antitrust risk. Our Company cannot communicate with its competitors directly about certain subjects, and it cannot do so indirectly through a resource. An email which shows that it has been sent to our Company and to other retailers is unacceptable. Additionally, an email that names other retailers or channels of distribution is unacceptable. If any of us receives such an email, we should immediately contact the Law Department. We should not respond to that email without legal consultation, and we should seek that legal consultation immediately.

3. We should avoid internal emails expressing opinions about what a resource's distribution practices should be or what our Company might or should do about it. Because emails are written so informally, oftentimes with such little precision and incomplete accuracy, and given the legal and business sensitivity of the subject of a resource's distribution practices, we should confine internal emails on the topic to factual statements about what the resource is doing or intends to do, or what our Company is doing or intends to do. As discussed above, all such emails must be clear and unambiguous. Such emails should not express our Company's opinion on this subject (e.g., what our Company thinks about what a resource is doing or should do, or what our Company might or should do about it). Any external emails to resources on the subject should comply with the principles set out below.

IV. Guidelines for Relations with Competitors

A. General Policy

Our Company sets its own prices, markups, markdowns and the other terms and conditions for the sale of its merchandise or services without any understanding or agreement, collaboration, consultation, or exchange of information with any competitor.

1. In these Guidelines, "competitor" means any other retailer of merchandise similar to merchandise we sell. Stores that are subsidiaries or organizations within our Company are not "competitors."
2. Our Company prohibits discussions, exchanges of information, agreements or understandings in direct communications with competitors and in indirect communications, through the use of intermediaries or otherwise.
3. We may make decisions regarding any of our prices, terms or conditions of sale based upon publicly available information about competitors' prices, terms or conditions (e.g., advertisements), but we should not under any circumstances communicate with any competitor regarding those prices, terms or conditions. We should document the source of the publicly available information whenever possible.
4. We may not reach any agreement or understanding or hold any conversation, formal or informal, with any competitor which would give either or both of the parties a basis for an expectation, whether or not fulfilled, that a price, business practice or decision if adopted by one will also be adopted, supported or concurred in by the other.
5. If at any time or place any competitor begins to discuss prices, markups, markdowns, other terms or conditions of sale, or relations with resources, we must immediately refuse to discuss these subjects and, if necessary, leave the room or hang up on a telephone conversation rather than listen to such discussion. These prohibitions against discussions with competitors do not apply to discussions solely within the Company. We may discuss any business practices and problems with employees of the Company, including those employed by other organizations or subsidiaries, provided that
   a. no one other than Company employees are present, and
   b. there is no reason to believe that any of the persons we are talking to will not comply with the instructions in these Guidelines.

B. Pricing

Our Company absolutely forbids an associate or anyone else on its behalf, under any circumstances, to discuss, exchange information, make any agreement or reach any understanding with any competitor regarding our prices or markups – present or future – or the competitor's prices or markups – present or future.

1. The antitrust laws do not prohibit a retailer from conducting comparative shopping. If we need to ascertain the prices charged by a competitor, we may shop the competing store. Preferably, we should use Company associates for any comparative shopping. If we use contract comparative shoppers, the shoppers may share the information they obtain only with our own employees.
2. While competitors are free to shop our stores to ascertain our current prices, we **may not** respond to any competitor's request to verify those prices. If a competitor asks what our price or proposed price is for any items, we should tell him that we do not discuss such matters with competitors.

C. Timing of Markdowns, Promotions and Clearance

Our Company absolutely forbids any associate or anyone else on its behalf, under any circumstances, to discuss, exchange information, make any agreement or reach any understanding with any competitor regarding the timing or amounts of, or the merchandise involved in, any markdowns, promotions or clearances.

1. There are no circumstances under which competitors may discuss the dollar or percentage amounts of markdowns or sales or the nature or identity of the merchandise involved.
2. There is **only one** situation in which the **timing** of promotions may be discussed with competitors, and the conditions of such discussions are strictly limited. We may cooperate with a geographically-oriented merchants' association (e.g., downtown area or shopping center) in special local events designed to draw customers to the shopping area at a particular time. In this connection, you may announce our policy that we will have some merchandise on promotion during the particular event. But we **may not**
   a. **discuss** what merchandise will be promoted or the prices involved;
   b. **make an agreement or understanding** that we will not engage in markdowns, clearances or promotions at times other than the local event; or
   c. **discuss** the nature of any competitor's promotions.

D. Other Terms and Conditions.

Our Company absolutely forbids any associate or anyone else on its behalf, under any circumstances, to discuss, exchange information, make any agreement or reach any understanding with any competitor regarding any other terms and conditions of sale to customers.

1. We **may not** discuss, exchange information, make any agreement or reach any understanding with any competitor concerning such matters as the following:

– alteration charges;	– check cashing charges;
– delivery charges;	– gift wrapping charges;
– break-point for free deliveries;	– free gift wrap policy;
– merchandise exchange policies;	– shopping bag charges;
– charges for appliance warranties;	– furniture or fur storage charges;
– servicing charges;	– period for free furniture storage;
– layaway charges;	– store hours; or
– credit service charges;	– other similar terms and conditions.

E. Trade Associations

We may not join or participate in the meetings of any trade association, other than national associations such as the NRF or state associations, unless our senior management has first formally determined that the association serves a legitimate business purpose and that its activities are adequately supervised by counsel.

1. Many trade associations perform useful and legitimate functions, e.g., facilitating the exchange of information on technological developments, standards, and governmental regulations. There is no reason to refrain from supporting such legitimate associations.
2. Trade association meetings, however, provide opportunities for informal gatherings of competitors and consequently expose each person present to the risk of a charge of collusion if such gatherings are later followed by parallel action.

3. Consequently, you must take great care not only to avoid any discussions or understandings regarding terms or conditions of sale, but also to avoid the appearance that such discussions or understandings have taken place. If any participant in an association meeting begins to discuss competitive pricing or any other terms or conditions of sale, you must immediately state that you cannot participate in such a discussion and **you must leave the meeting.**

F. Resources

Our Company strictly limits discussions with any competitor regarding our relations or the competitor's relations with resources.

1. We **may not** explicitly or impliedly agree with any competitor to refuse to deal with any resource. Specifically, **we may not** discuss or reach any understanding with a competitor that the Company or the competitor will:
   a. purchase only from "legitimate resources"; or
   b. refuse to purchase from resources who sell to "price cutters"; or
   c. discontinue purchasing from resources who do not maintain or police suggested minimum resale prices.
2. We **may not** discuss with any competitor the existence, adequacy or amount of any resource's suggested retail prices.
3. We **may not** discuss with any competitor our or any other retailer's policy regarding adherence to suggested retail prices nor any resource's practices of enforcing suggested retail prices.
4. We **may not** discuss with any competitor any resource's distribution policies, including exclusives and selective distribution.
5. No one other than representatives of our Company and the resource may be present when we discuss terms or conditions with any resource.

V. Guidelines for Relations with Resources

A. General Policy

In the exercise of independent business judgment, we are free to determine which resources our Company will do business with. Resources acting at all times on the basis of their independent business judgments are free to determine which retailers they will do business with.

B. Retail Prices

We may not reach any agreement or understanding with any resource as to the price at which our Company, or any other retailer, will sell the resource's merchandise.

We are completely free to charge whatever retail price we independently determine is appropriate for all our merchandise. Every competitor has the same right.

If a resource asks what retail price we are charging or intend to charge for his merchandise, we may tell him the price. At the same time, we must make clear that

1. He may not inform any competitor or other resource of our price, and
2. We reserve the right on the basis of our independent business judgment to charge whatever retail price we deem appropriate.

C. Suggested Retail Prices

A resource may independently suggest retail prices. In such a case, the retailer is legally free to sell at the suggested price, or not, as he sees fit. Before July, 2007, a vendor could not, under any circumstances, require a retailer to agree to charge a minimum price for the vendor's goods. In 2007, the Supreme Court ruled that minimum price agreements are not automatically illegal. However, they are still fraught with substantial legal risk, **and the subject should be dealt with only with extreme care and in consultation with the Law Department.**

If a resource proposes that we agree not to sell the vendor's products below a minimum price, we should clearly and unequivocally reject that proposal and contact the Law Department immediately.

If a resource proposes to sell us products with a suggested retail price,

1. The suggested retail price must originate with the resource, based on his own independent assessment of his business interests.
   a. We may ask a resource whether he has a suggested retail price and, if so, what it is.
   b. We may not orally or in writing request a resource to commence the practice of suggesting retail prices if he is not doing so.
   c. We may not orally or in writing request a resource who does suggest retail prices that he alter his price suggestions in any way.
   d. We may unilaterally determine not to purchase from any particular resource, including resources who do not suggest retail prices or whose suggested prices we deem unsatisfactory.
2. While we may legally purchase from resources who sell on a suggested price basis and may legally sell at that price if that is our own determination, we may not orally or in writing give the resource any affirmation or promise that we will maintain the suggested price. We should tell resources who ask for such a promise that, while we fully understand their suggested resale price policy and the possible consequences of not following it, our Company's policy does not permit us to give the resource an agreement or understanding that our Company will maintain the price.
3. In discussing a suggested resale price, we may not discuss with the resource whether other retailers have indicated a willingness to sell at the suggested price. We also may not discuss the suggested price policies of other resources.
4. Fair-trade laws have been abolished. The only recourse of a supplier whose suggested retail prices are not being utilized is to discontinue selling to the retailers involved. It is strictly up to the resource to determine whether he wishes to take such action.

D. Suggested Markdowns and Clearance Dates

A resource may suggest markdown levels or clearance dates on its merchandise in conjunction with suggested retail price or otherwise.

Again, if a resource proposes that we agree to markdown levels or clearance dates, we should clearly and unequivocally reject that proposal and contact the Law Department immediately.

If a resource suggests markdown levels or clearance dates,

1. In every respect, the suggestions must originate with the resource.
2. We are free to follow or not to follow the resources' suggestions, as we see fit.
3. We may not agree with or promise the resource that we will adhere to his suggestion. We may advise him that we understand his policy and the consequences of any failure to follow the suggestions.

E. Failure of Competitors to Follow Resources' Price or Clearance Date Suggestions.

Retailers are free to stop buying from a resource for any reason, including the fact that the resource's product is being sold elsewhere in the trading area at prices that make it unattractive for the retailer to handle. A retailer **may not**, however, threaten or coerce a resource into policing or enforcing suggested retail prices or clearance dates as a condition of continuing to do business with the resource, nor may a retailer make any kind of agreement with a resource on this subject. Special care must be taken in discussing with a resource the fact that his price or clearance date suggestions have not been followed.

1. We should not communicate at all with the resource about the failure of competitors to follow suggestions. We should simply take appropriate action to dispose of our inventory.
2. If we choose to mark down merchandise because of competitive pricing, we may inform the resource – after taking the markdown – of the store's policy to meet competitive prices, and that we have marked the merchandise down from the suggested price to meet competitive prices in our area. Subject to the conditions mentioned in Section V.B. above, we may also advise him what our markdown price is. However, we may not do any of the following:
   a. We **may not** identify the price cutting retailer by name or otherwise.
   b. We **may not** inform the resource of the competitive price.
   c. We **may not** request the resource to take any action to change any retailer's prices or otherwise enforce or maintain his suggested retail prices.
   d. We **may not** request the resource to discontinue selling to any competing retailer.
   e. We **may not** request the resource to buy up any competing retailer's stock.
   f. We **may not** undertake to buy up any competing retailer's stock with the understanding that the resource will reimburse our costs.
   g. We **may not** request the resource to set up an effective program to maintain his suggested prices.
   h. We **may** not threaten to discontinue buying from the resource unless he takes action to maintain his suggested price.
   i. We **may not** reach any agreement or understanding with respect to the above items.
3. If a resource informs us that he will take or has taken steps to ensure adherence to retail prices or clearance dates in our area, we should advise him that we cannot and did not request him to take any such action. He is free to conduct his business as he sees fit, and we will continue to make our buying decisions in accordance with our legitimate, independent business judgment. We should also advise the Law Department of this conversation.
4. If, after we have discontinued buying from a resource, or before we commence dealing with a new resource, the resource seeks to obtain our business by informing us that he is taking steps to maintain his suggested retail prices or clearance dates, we should advise him that we will determine whether or not to purchase his goods solely on the basis of the merchandise's value, potential profitability, and compatibility with our needs.
5. If a resource advises us that he will no longer sell us merchandise because we have cut the price, we may advise him of the reason for the markdown (e.g., to meet competition) and should contact the Law Department. We may ask the resource to reconsider his decision, but we may not give him an assurance that we will follow his price suggestions in the future. (See Section V.C. above.)

F. Exclusivity

A resource has the right independently to determine its own distribution policies and to select the parties to whom it will or to whom it will not sell. By the same token, our buyers have the right freely to determine from which resources they will buy. Accordingly, we are free to accept merchandise from a resource which the resource independently determines it desires to provide exclusively to us. However, we must take special care in any discussion of exclusives with a resource.

1. You may request an agreement or commitment from a resource to sell its line exclusively to our stores in all or any part of our trading area, provided that you do not request that the resource discontinue its business with a competitor. Your request should, therefore, be limited to product launches or limited periods where the product has yet to be offered in a particular trading area.
2. If a resource has a policy of granting exclusives, or if it indicates that it is willing to consider an exclusive, you may inform him of the **affirmative reasons** why it may choose to offer an exclusive of particular styles to our Company.
   a. We may advise the resource of the benefits that will result from our handling, display and promotion of its merchandise.
   b. You may advise the resource of our substantial investment in the creation of a prestige image and the consequent benefit to the resource of identification with our Company.
   c. When such is the fact, you may point out that our advertising carries the resource's name in the case of exclusive merchandise but not otherwise, and that the exclusive helps the resource by building up its image among consumers.
   d. When it is true, you may emphasize that we concentrate more of our advertising budget on exclusive merchandise. Such concentration in turn aids the resource by enhancing his public image and increasing its sales.

   There may be other reasons for exclusivity, but these should be discussed with the Law Department.
3. In discussing exclusives with a resource, you may not do any of the following:
   a. **We may not** mention any other particular retailer, or type of retailer, which we do not want the resource to supply.
   b. **We may not** mention any other retailer's prices, advertising practices, or markup policies.
   c. **We may not** mention discount operations or refer by any means to the pricing policies of other retailers.
   d. In discussing the geographic area covered by a resource's exclusive, we may not use specific locations which have the practical effect of identifying particular competitors or types of retailers. Rather, we should keep our discussion of the geographic area as general as possible.
   e. **We may not** refer to exclusive arrangements, or any other relations, between our Company and any other resource.
   f. **We may not** discuss the resource's exclusive arrangements, or any other relations, with any other retailer.
   g. **We may not** participate in discussions with other retailers, or in meetings with other retailers and/or other resource representatives, concerning the exclusive of any resource's merchandise to specified outlets, types of outlets or areas. Exclusive discussions should be held **solely** between representatives of our Company and the particular resource involved.
4. Even though exclusive arrangements are generally permitted, there are some limited circumstances where we should still avoid them. These can include situations where
   a. a resource has a monopoly on the kind of goods involved (as distinguished from his particular brand) or
   b. we may have exclusives with so many of the suppliers of a kind of goods that someone could claim we are trying to foreclose competitors from access to the market.

   If you have a sense that either of these situations might apply, you should consult with the Law Department before discussing a possible exclusive arrangement.

VI. Guidelines – Communications with Resources on Distribution Issues

A. Introduction

These Guidelines are designed to avoid antitrust liability for agreements that may restrain competition among resources and/or retailers in respect of a resource's distribution practices. Implicit in the Guidelines is the recognition that our Company competes with a broad spectrum of retailers, from mass merchandisers to high-end luxury retailers, and everything in between, and that there is a large variety of resources for virtually every product line that our Company is interested in carrying. Notwithstanding the breadth of such competition and the multiplicity of such resources, the subject of antitrust and the principles set out in these Guidelines are extremely important to our Company and its interaction with resources on distribution issues.

B. General Policy

A resource is free to independently determine to whom it will sell its merchandise. We are free to independently determine which resources we will do business with. We are free to independently determine whether we will do business with a resource based upon the resource's distribution policy and practice. We are not free to do business with a resource on condition the resource agrees to change its distribution policy and practice. However, we are free to accept merchandise from resources who determine independently that they desire to sell us on a selective basis. If a resource indicates an intention to sell us on a selective basis, or otherwise raises this subject, you should indicate that this is a matter the resource must independently determine on its own. Before we discuss the subject further, we must discuss the proposed offer, and any offer in turn we would make, in advance with the Law Department before we have any further contact with the resource.

C. Our Company's Philosophy on Distribution of Merchandise

An important element of our Company's merchandising strategy is to carry distinctive and unique merchandise and, where possible, exclusive merchandise so as to distinguish its stores from those of its competitors and to attract knowledgeable customers. To that end, our Company believes the distribution of the merchandise carried in our stores should have as limited distribution as is reasonably possible. Merchandise distributed in retail channels other than our Company's primary retail channel will generally lose its distinctiveness and uniqueness and will not be as attractive to our Company or to its customers.

Our Company recognizes that vendors have the right to determine their own distribution strategies, and we will not interfere with those decisions. Our Company reserves the right independently and unilaterally to choose vendors to supply its stores based on the business strategy described in this policy statement.

D. Mandatory Rules

As a threshold matter, it is important to realize that even innocuous conversations can be construed as reflecting an agreement in restraint of trade between the participants in the discussion. Under the antitrust laws, proving an agreement can be relatively easy. An unlawful agreement need not be in writing, nor need it be an express agreement. An agreement need not be explicit – it can be implied from subsequent behavior. Moreover, the state of mind of one of the participants in a discussion can be relevant – if we say "it is your decision," a resource may perceive it differently and hear "our Company will cut you off." Accordingly, the following general rules apply in all circumstances in respect of communications on resource distribution issues.

1. We **may not** discuss resource distribution policies or practices with another retailer. Even innocent discussions at meetings or on social occasions can be misconstrued and lead to allegations of a conspiracy.
2. We **may not** discuss a particular resource's distribution with another resource. Such discussions could give rise to accusations that we are acting as a conduit for improper discussions between the resources. For example, this situation could arise where a brand has several different licensees for different lines.
3. We **may not** discuss another retailer with a resource. Discussions of competitors with resources could lead to allegations that our Company is advocating a boycott of those competitors.

4. Only designated Company personnel are to engage in discussions with resources on their distribution policies/ practices. Our Company can more effectively ensure that the message that it communicates is consistent and comports with the Guidelines by imposing restrictions on the number of people who can interface with resources on this subject. The designated Company personnel is the GMM for the relevant family of business for each Macy's and [redacted] Organization.

   This rule does not apply to routine conversations between our Company and a resource in the ordinary course of business, such as a buyer level meeting with a resource representative to discuss product assortments, markdown allowances, advertising support and the like, entailing the resource's articulation of its distribution policy in response to a question from us seeking only to know what that policy is. (But once that question is answered, no further discussion of distribution should occur.) Additionally, if the GMM for the relevant family of business does not have a relationship either with the resource or the appropriate contact at the resource in connection with a particular distribution issue with that resource, the GMM can delegate to a less senior merchandising executive the authority to reach-out to the resource on the distribution issue, provided that the delegee discusses the proposed contact with the resource in advance with the Law Department.

5. **We may not** enter into any discussion with a resource about its distribution practices without first talking with the Law Department. The Guiding Principles set out below provide general principles applicable to such discussions. Each situation, however, is fact specific and the facts need to be reviewed with the Law Department to apply the principles to the situation at hand.

6. **We must follow up** every conversation with a resource on the subject of distribution with a letter from us confirming the conversation. Because even entirely reasonable, honest people can have different interpretations of what happened in an oral conversation, it is critical that conversations on this subject be confirmed in writing. Moreover, a writing will flush out any disagreement with what occurred during the conversation and it is better to air those differences early on than to have them serve as the catalyst for an antitrust claim or investigation later. The Law Department will draft the letter after being notified that a conversation has occurred.

E. Guiding Principles

1. Communications with a resource that already sells product lines to the Company about expanded distribution

   a. We should not express any interest in or opposition to a resource's current distribution practices with regard to existing product lines. See the discussion under E. (4), below, for the guidelines applicable to exclusive or limited exclusive arrangements for new product lines.

   b. We should affirmatively acknowledge that the resource has the right to sell to any retailer.

   c. We may discuss the possibility of exclusive distribution through our Company of a new product or brand, as long as such discussions are consistent with the guidelines below addressing exclusivity (see E. (4)).

   d. We may ask a resource what its distribution policy is for the product line we are considering purchasing. Beyond obtaining such information, no other exchange on the distribution subject should occur.

      (i) Such questions would typically occur in a routine buyer-level conversation with a resource in the ordinary course of business, such as in a meeting to discuss product assortments, resource support and the like, entailing the resource's articulation of its distribution policy in response to a question from Macy's seeking only to know what that policy is.

   e. We should not threaten to terminate or limit purchases if the resource does not change its distribution practices.

      (i) Our Company may independently determine whether to terminate or limit purchases if the resource does not change its strategy, but this decision must be made at a high level (not below the GMM level) after consultation with the Law Department.

2. Communications with a resource considering expanding distribution of its products – whether or not the resource has already contacted potential new customers – but when the resource's distribution decision has not yet been made

   a. We can describe our Company's distribution philosophy. (See C. above)

   b. We may not express any interest in or opposition to the resource's expanding its distribution.

   c. We may discuss the possibility of exclusive distribution through our Company of a new product or brand, as long as such discussions are consistent with the guidelines below addressing exclusivity (see D. (4)).

   d. We may ask a resource what its distribution policy is for the product line we are considering purchasing. Beyond obtaining such information, no other exchange on the distribution subject should occur.

      (i) Such questions would typically occur in a routine buyer-level conversation with a resource in the ordinary course of business, such as in a meeting to discuss product assortments, vendor support and the like, entailing the resource's articulation of its distribution policy in response to a question from us seeking only to know what that policy is.

   e. We should not threaten to terminate or limit purchases if the resource does not change its distribution practices.

      (i) Our Company may independently determine whether to terminate or limit purchases if the resource does not change its strategy, but this decision must be made at a high level (not below the GMM level) after consultation with the Law Department.

   f. We should affirmatively acknowledge that the resource has the right to sell to any retailer.

   g. We should not ask which retailers the vendor is in discussions with.

   h. We should not discuss specific retailers with the resource. If the resource inquires as to our reaction to expanding to a specific retailer or a specific channel of distribution by naming the retailer or channel, we must state that we do not discuss specific retailers or channels of distribution and the resource has the right to sell to any retailer or channel of distribution.

3. Communications with a new resource so the resource will know and understand our Company's marketing and business strategy

   a. Our Company has the right to establish its own policies as to which resource it will deal with and to announce these policies publicly.

   b. Our Company should be sure to apply these policies consistently.

   c. We may ask a new resource what its distribution policy/philosophy is, but we must be very careful not to express negative views about that policy/philosophy nor should we inquire as to which particular retailers the resource sells to.

   d. We should not discuss specific retailers or channels of distribution with the resource. If the resource asks for our reaction to selling to a specific retailer or channel of distribution, we must state that we are interested in its distribution policy/philosophy only, that we do not discuss specific retailers or channels of distribution and that the resource has the right to sell to any retailer or channel of distribution.

4. Communications with an existing resource where we would like the resource to develop a new product or brand exclusively for us or our channel of distribution

   a. These Guidelines apply to discussions about full exclusivity, limited exclusivity, co-branding, private labels, and similar undertakings.

   b. The discussion should focus on the positive aspects of exclusivity.

c. We should not discuss the impact of the exclusivity on other retailers.

(i) If the resource indicates that another retailer has expressed interest in the product in question, we may still ask for exclusivity on the product.

d. The discussion cannot include a suggestion that the resource's distribution to other retailers should be discontinued.

e. We may discuss the scope of the exclusivity.

(i) We may ask for exclusivity on the product, coloration of product, packaging, duration, fixturing and shops.

(ii) Similarly, subject to the qualification noted below, we may ask for a lead time before the product is distributed or ask for all of the resource's first round capability, the resource's entire production or the resource's first shipments from its warehouse.

(iii) The question is whether such a lead time or such a commitment would cause significant competitive harm to other retailers. If competitors would fall so far behind that they could not market a competing product, these types of requests might be problematic, but ordinarily they should be legitimate. If we have any concern about this, we should consult the Law Department.

(iv) We may ask for permission to run the first ads about a particular product (so we can say "only at Macy's" or "only at [redacted] so long as the product is not available at other outlets. The ads must be run for a long enough period of time so that there is a defined period during which the "only at Macy's" or "only at [redacted] claim is accurate.

f. We may discuss pricing terms related to the exclusivity but still may not agree with the resource as to the retail price of the item and must always independently set the retail price.

g. We may seek terms to prevent a future devaluation of the exclusivity (e.g., prohibiting distributing a similar product, encouraging the resource not to knock off the product and sell to another retailer). If the exclusivity itself is legitimate, reasonable terms to protect that exclusivity are also legitimate.

h. Exclusivity or limited exclusivity deals must be put in writing. The Law Department will draft agreements.

i. As a general matter, our Company will be prepared to enforce exclusivity arrangements, unless the facts and circumstances of a particular situation suggest a different course as part of a business decision.

j. In all instances when any type of exclusivity is being discussed with a resource, the Law Department should be consulted given the fact-specific nature, and varying legal implications, of such arrangements.

VII. Negotiating the Lowest Lawful Prices and Allowances

We want you to compete vigorously and fairly, and we expect you to negotiate for the best prices, allowances, promotions and concessions that you can from our resources, including the best arrangements concerning terms, markdown allowances, advertising allowances, return privileges, display money and onsite demonstrations.

However, part of the antitrust laws (the part that prohibits "discriminatory" pricing) limits how we handle these negotiations. On the one hand, we can simply demand and receive a resource's best or lowest price – that is entirely legitimate and of no concern. On the other hand, we cannot **knowingly** demand and receive **better terms than the resource offers a particular, identified competitor.** The best practice is to negotiate without referring to the prices or terms that the resource offers to any particular competitor. If you have any question about whether a particular situation poses a risk under these rules, or if you believe there are circumstances (such as the magnitude of our purchases) warranting our receipt of better pricing or other terms from a resource than what the resource is offering our competition, you should consult with the Law Department immediately.

If a resource (or potential resource) tells you that it believes another resource is giving our Company "discriminatory" price, terms or allowances, you should report the "complaint" to the Law Department so we can take steps to assure that we have not knowingly induced or received discriminatory prices or allowances.

Finally, you should report any threat of price discrimination litigation against Macy's to the Law Department immediately.

[redacted] Retail Advertising Guidelines

These Retail Advertising Guidelines (the "Guidelines") set minimum compliance standards. The Guidelines are not all-encompassing, nor do they cover all possible advertising issues.

Advertising is any method used to invite or encourage consumers to buy merchandise or services, including newspaper ads, catalogs, radio, television, the Internet, email, mobile marketing, sale letters and store signs. Price tags, tickets and drop tags may also be viewed as advertising. As a result, the standards set forth in the Guidelines apply to in-store advertising and signs (including price reductions that were not advertised in print or broadcast media), as well as to events that have been advertised in print, broadcast or other outside media Advertisements must be truthful in all particulars, as well as in the general impression they convey. They must be considered in their entirety as they would be read and understood by the average customer. Not only what is said, but also what is not said in an advertisement is of importance.

These Guidelines, which may be amended from time to time, are supplemented by the Common Advertising Terminology (CAT). There are separate CATs for Macy's and [redacted] because they use different terminology in some cases. Any proposed changes in CAT should be directed to the EVP of Marketing at Macy's and VP of Marketing at [redacted] as applicable.

These Guidelines contain the general rules applicable to the Macy's and [redacted] retail operations. The retail operations must follow more stringent rules imposed under applicable state or local laws or orders, and they may, as a matter of policy, impose more stringent requirements on themselves. Any additional state or local legal requirements and modified policies that apply to a retail operation are set forth in Attachment A. Refer to your Macy's or [redacted] Attachment "A," as applicable, for those additional standards.

When the term "item" is used in the Guidelines, it refers to both merchandise and services. When the Guidelines talk about price comparisons, establishment or duration, the standards must be met for the same "item" or "service" (not a similar item).

Any questions regarding the Guidelines or CAT, the application of the Guidelines or CAT to particular or unique situations, or issues not specifically covered in the Guidelines or CAT should be directed to the Macy's Law Department.

I. Availability Of Advertised Merchandise

A. Merchandise must be available for immediate purchase when a store opens on the date specified in the advertisement, or on the date the advertisement appears when no date is specified.

B. A representative assortment of merchandise must be available in sufficient quantities in all participating stores, unless otherwise noted in the advertisement, to meet reasonably anticipated customer demand for the time specified in the advertisement, or at least for the first three (3) days when no time period is specified. On websites, an accurate and substantiated shipping time must be provided for every item.

C. In determining "anticipated customer demand," consider the following factors:

1. The customer demand generated at each store from the most recent advertisement of the merchandise, or, if not available, comparable product, adjusted for other pertinent factors that could affect demand (e.g., season, advertising, store changes);
2. The scarcity of the merchandise;
3. The price reduction of the merchandise, if any; and
4. Any other unusual features of the merchandise.

D. Exceptions to merchandise availability requirement in ¶ I.B. above:

1. The requirement will not apply when quantities available are limited and this fact is clearly and conspicuously disclosed in the advertisement (e.g., "quantities limited,""while supplies last,""only x number per store,""not available in xx store.")
2. The requirement also will not apply when merchandise is not normally carried in stock and must be ordered, as is often the case with silver, crystal, china and many furniture items. However, this fact must be clearly and conspicuously disclosed in the advertisement (e.g., "some patterns may not be available in store and will have to be ordered; shipping and handling fees will apply," or similar wording). If a delivery or handling charge will apply, this fact also must be stated.

E. Location Limitations

1. Macy's and [redacted] each have stores in numerous states. In some cases, advertising may be regional. Where that is the case, the ad should disclose the region it applies to (e.g., "this ad applies to East Coast Macy's stores" or "wool coats not available in Florida stores").
2. Advertising must include a clear disclosure on the back cover and every other page that merchandise and selection may vary by store, such as by stating:

   "Advertised merchandise may not be carried at your local [Macy's or Bloomingdale's, as applicable], and selection may vary by store." or

   "Advertised items may not be available at your local [Macy's or [redacted] as applicable]"
3. If merchandise is not carried at all of the stores, where feasible and in cases of limited store distribution, advertising should specify the stores where an item is carried or the stores where it is not carried, such as by stating:

   "Furniture is not carried at xyz store(s)."

   "Not available in the Western States"

   "Available only in our Southern stores"
4. Unless otherwise specified, advertising refers to all stores, not including clearance centers, warehouses or distribution centers.
5. If advertised merchandise is only being offered for sale at the advertised price at a clearance center, this limitation must be prominently disclosed in advertising.
6. For national broadcast or direct mail, all stores must carry the advertised merchandise, and, if not carried in all markets, that fact must be disclosed. Alternatively, advertising may disclose that the merchandise is only carried in limited stores. Preferably, advertising should refer customers to the applicable website to find out which stores are carrying the merchandise.

II. Pricing Terms

A. General Rules

1. The use of the words "Sale," "Special," "Save," "Reduced," or words of similar meaning, represent that merchandise or services are offered at savings from the current, previous or future price.

    a. The term "promotional price" reduction refers to a temporary reduction from the regular price or an immediately preceding price of an item (e.g., temporary % off the regular price during a "sale" event or a temporary % off a permanently reduced price).

    b. Only use "Sale" when offering a price reduction for a limited period of time. This includes additional percentage off reductions from a permanently reduced price.

    c. No merchandise may be on "sale" for more than sixty (60) continuous days.

    d. Use "Save" to communicate a savings that will be achieved when making a comparison between the current offering price of merchandise and a higher offering price (e.g., a former, future, "if perfect" or "if purchased separately" price) or by purchasing multiple units. Note: the savings must be meaningful.

    e. The phrase "clearance" or "clearance sale" may be used to advertise permanently reduced merchandise that is not being reordered.

2. Minimum price reductions

    a. Promotional price reductions and permanent price reductions must be at least ten percent (10%) or $50.00, whichever is less.

    b. Use of a comparative price and/or percentage discount or amount in advertising is preferred as a general rule, and is mandated where required by state or local law. All comparative ads, however, must meet the above standard (i.e., 10% or $50 off).

    c. Where national advertising refers to prices and discounts, they must be consistent nationwide, or the price/discount at which an item is offered must be more favorable than the advertised price discount. Any exceptions must be disclosed.

3. Durational Rules

    Except for clearance or closeout merchandise, merchandise may not be on "sale" or offered at a reduced price using a price comparative, in advertising, in-store or on the Internet, for more than the following periods of time:

    a. Fine jewelry may be offered at a promotional price for no more than fifty-five percent (55%) of the time out of a twelve-month period or, if the item was offered for less than a year, for no more than fifty-five percent (55%) of the total time the merchandise was actually offered for sale (prior to clearance).

    b. All other merchandise categories may be offered at a promotional price for no more than sixty-nine percent (69%) of the time out of a twelve-month period or, if the item was offered for less than a year, for no more than sixty-nine percent (69%) of the total time the merchandise was actually offered for sale (prior to clearance).

    c. See the Macy's or Bloomingdale's Attachment "B" supplement to these Guidelines for any modifications to the durational standards based on state or store operation policy standards approved by the Chief Merchandising Officer of Macy's and [redacted] respectively.

    Any modifications or alternatives to the above standard necessary to meet competition or unique circumstances must be approved by the Merchandising Principal after consultation with the Law Department.

4. Savings Claims over 50%

   a. Price reduction Approvals

      No price comparison, reduction or savings claim of more than 50% may be used (excluding clearance or closeout merchandise) unless the Merchandising Principal and/or General Merchandise Manager has approved its use in writing. Refer to Attachment B for applicable standards for Macy's and [redacted]

5. Offering Prices

   a. If few or no sales were made at the higher comparative price (e.g., a "regular" or "original" price), special caution must be taken to assure that the "regular" price was, in fact, a good faith offer to sell the merchandise and was established consistent with the pricing of goods of that type. Also, when advertising an item at a reduced price, avoid any implication that the advertised "regular" or "original" price was a "selling" price, rather than an "offering" price.

   b. The following statement must appear conspicuously in all written advertisements in which a comparative price is referenced (including for clearance and closeout). In pre-print ads (e.g., direct mail or inserts), the legend must appear either on every other page or on the last page in bold and dominant print. In ROP ads, the legend should appear on every page, except on double truck ROP ads, where the legend may appear on one of the double truck pages. On the Internet, it should appear in the Pricing Policy, however, on product pages and emails, it may appear as a statement or through a descriptive link (e.g., "about our pricing").

      REG & ORIG PRICES ARE OFFERING PRICES, AND SAVINGS MAY NOT BE BASED ON ACTUAL SALES.

B. Use of the Term "Regularly"

1. Definition

   "Regularly" is used when a temporary reduction is taken from the immediately preceding price for the item, and the item will return to that price following the sale event. Regularly may also be used in three-tier pricing when the price will revert to the regular price following the promotional events (See ¶ II. D).

2. Establishment of a "Regular" Price

   a. Initial Establishment

      i. Before offering an item at a reduced price with a comparison to its "regular" price, the item must have been sold in substantial numbers or have been openly and actively offered on the selling floor in all markets at the "regular" price for at least fourteen (14) days. The item then may be offered at a price reduction.

      ii. The initial 14 establishment period may be disregarded only for (a) a department or store-wide one or two day "sale" event occurring during the initial establishment period or (b) newly arriving goods when price changes and sale advertising are based on classification and a small percentage of new merchandise (e.g., 5%) is being brought onto the selling floor or offered on the Internet during an event. However, such "sale" days count in computing the promotional days permitted for each item under paragraph II.A.3.

   b. Re-establishment of Regular Price

      Except during the holiday season (where a special explanatory disclaimer is used), an item must return to the regular price on the day following an advertised sale ending date, and be re-established at the "regular" price for at least three (3) days prior to being offered again at a "sale" price.

3. Revised Retails

a. If the "regular" price of an item is increased, the new higher price may not be used as a regular price comparative in media advertising until the item has been offered for sale at the higher price for at least 14 continuous days. Ads must continue to use the former lower comparative price until such time as the new higher "regular" price has been established. If a new higher price will be established after a sale event, advertising may, however, refer to the new higher retail price in advertising by referencing the price that will be in effect following the end of the sale event (e.g., "After Sale" for Macy and "Will Be" for [redacted]

b. Where the retail price of an item is lowered, only the new, lower "regular" price may be referenced as a "regular" price in advertising.

C. Use of the Term "Originally"

1. Definition

"Originally" designates that a permanent reduction has been taken from the former price of an item (e.g., from initial ticketed price) and that the price of the item will not return to that reference price.

2. Validity of "Original" Comparative Price

a. Merchandise must have complied with (i) the establishment rules set forth in paragraph II B. 2.a above and (ii) have been sold in substantial numbers and/or met the durational rules in paragraph II. A. 3.

b. If the "original" price is not the immediately preceding price, advertising must state: "Intermediate price reductions may have been taken."

c. Clearance and Closeout. Use of "original" price comparatives for permanent reductions when merchandise will not be re-ordered.

i. In the case of limited quantities and where the goods will not be reordered, merchandise may be advertised as a clearance or closeout using an "original" price comparative until sold out or may be reduced further, provided that the merchandise met:

(a) The establishment rule in paragraph II. B.2.a;

(b) The applicable durational rule prior to the clearance or closeout in accordance with paragraph II.A.3; and the disclosures set forth in paragraph II.C.2.b-d, as applicable, are made.

ii. If clearance or closeout merchandise has not been offered at the original price within the past 90 days, advertising preferably should disclose the date or time period the original price was in effect. If it is not possible to state the exact time period, advertising must state: "Some orig. prices not in effect during past 90 days."

iii. If clearance or closeout merchandise has not been offered at the original price within the past 180 days, reference may be made to the original price only if the specific date it was last in effect is disclosed on the product page (e.g., month/season).

d. Use of "original" price quotes for permanent reductions when merchandise will still be re-ordered.

The durational rules in subparagraph II.A.3 continue to apply when merchandise that has been permanently reduced is still being re-ordered. Moreover, if merchandise is still being re-ordered, no reference may be made to an original price after 60 days following the last date the merchandise was offered at the original price.

D. Three Tier Pricing

1. Three tier pricing may be used when offering a temporary price reduction off of a "sale" or permanently reduced price.

    a. Comparisons between a current "sale" price and a higher previous "sale" price.

        i. If advertising compares a current "sale" price to both a higher off sale (e.g., "regular") price and to a former promotional "sale" price, the former higher promotional "sale" price must either be: (a) the predominant promotional price at which the merchandise was offered on the selling floor prior to the event (e.g., for at least 50% of the time that the item has been offered at a reduced price) or (b) the immediately preceding "sale" price (i.e., it's a "sale within a sale"). See CAT for additional information and examples.

        ii. If merchandise that is currently on "sale" is featured in a one-day sale (i.e., a sale within a sale), the price of the merchandise must be lowered for that event.

    b. Comparisons between a current "sale" price and the "original" and "permanently reduced" price.

        i. If advertising compares a current temporary price reduction during a sale event (e.g., "now" price) to the permanently reduced price and the former "original" price (e.g., 10% off clearance prices or "orig/was/now)), the merchandise must have met the establishment and durational rules and have been offered at the permanently reduced price for a reasonable amount of time. Also, the temporary price reduction off of the clearance price must be limited in duration.

        ii. Advertising should disclose the end date of the temporary discount, and, following the end date of the discount, the price should revert to the permanently reduced price.

        iii. Advertising should designate the time period when the former higher price was in effect for "original" quotes (e.g., *"Some Orig prices not in effect during past 90 days"*) and state that intermediate price reductions may have been taken.

2. See Macy's or [redacted] CAT, as applicable, for approved three-tier wording.

E. Use of the Term "After Sale" or "Will Be"

1. Introductory offers

    "After Sale" or "Will Be" may be used when an item:

    a. Is being offered for a limited introductory sale period, which may not exceed thirty (30) days;

    b. Is new to stock, and has not been previously offered for sale, or has been previously offered for sale at the "after sale" or "will be" price for less than fourteen (14) days immediately preceding the introductory price representation; and

    c. Will be offered for sale at the "after sale" or "will be" price (i.e., "regular" price) immediately after the introductory offer and for at least as long as the introductory offer period or fourteen (14) consecutive days, whichever is greater.

2. Use of "After Sale" or "Will Be" for Price increases – See ¶ II.B.3 and applicable CAT

F. Temporary Reductions and "Sale" ending dates

1. Advertisements featuring "sale" priced items should state an ending date. Shorter-term offerings should state the duration in the headline.
2. If items featured in a "sale" event have been on "sale" immediately before a short store-wide sale event, the ad should disclose that there is an ongoing sale (e.g., by stating "sale in progress" or "ongoing now").
3. If items featured in a "sale" ad will remain on sale immediately after that event, the ad must disclose the correct sale ending date for that item.
4. Sale prices and other temporary price reductions must end on the advertised sale ending date. It is not permissible to have back-to-back "sales" of the identical item.
5. Advertising should not include a sale ending date for: (a) permanently marked down merchandise, such as clearance or closeout items or perms with re-orders, or (b) non-sale merchandise (e.g., special purchase, if perfect, EDV, if purchased separately).
6. Exceptions:

   The sale ending date rules may be disregarded after advertising containing a "regular" price comparative has been finalized only under the following limited circumstances:

   a. Where merchandise has been permanently reduced for clearance following finalization of pre-print advertising, in conformance with company policy to permanently reduce slow moving merchandise (e.g., the Macy 20/20 policy and formula), provided that advertising in which the item was featured included the following generic disclosure:

      "Some reg/sale items may have been permanently reduced for clearance after this book was finalized."

   b. Where a sale is extended due to unforeseen events outside of the company's control (e.g., blizzard, hurricane, citywide electrical outages) and written approval for the extension has been obtained from the Merchandising Principal.

7. Temporary Reductions off of Permanently Reduced Prices

   Offers to take an additional percentage off of a clearance, closeout or permanently reduced price should disclose the ending date of the additional reduction offer and be reasonably limited in duration.

G. "Everyday Value" or "Always" Price

1. The term "Everyday Value" or "Always" means **no** comparative prices or phrases may be used.
2. Such merchandise price must represent a legitimate value based upon pertinent factors (e.g., mark-up, competitors' prices in the trade area, regular pricing of comparable merchandise, quality).
3. No price reductions are permitted (except clearance) for merchandise that has been advertised or promoted as being at "Everyday Value" or "Always" price.
4. Any changes affecting an EDV price (e.g., changes from an EDV to a promotional price or increases or reductions in EDV priced merchandise) require prior approvals and a minimum 30 day establishment period. See CAT for details, including requirements for submitting proposed changes to the EDV gatekeeper.

III. Miscellaneous- Price Related

A. Percentage/Dollar Savings

1. When price or percentage savings claims are made, the range of savings must be disclosed (e.g., "Save 10% to 50%;" "Save $10 to $50").
2. For percentage off savings, at least 10% of total stock offered must be at the high end and a representative number at various points between the high and low. No item may be offered at less than the lowest discount percentage stated.
3. No "up to" savings claims are permitted. Any limited exceptions must be reviewed with the Law Department.
4. Where advertising includes the price points of merchandise within the advertised percentage off or dollar off range (e.g., reg. $20 to $100; sale $16 to $75), at least 10% of the total stock must be at both the lowest and highest price points with representative amounts in-between.
5. Ads must disclose the basis of savings (e.g., savings are a reduction from a former price or represent a comparison to an "if purchased separately" price). The word "off" may be used only with properly established quote phrase/price; it must never be used alone.
6. Ads must clearly disclose how savings will be computed if not being deducted off of the comparative price (e.g., "30% off regular price, plus an extra 10% off the sale price" or "an extra 10% off the already reduced price").

B. "Bonus" or "Free" Gift Offers

1. The terms "bonus" or "free" may be used in advertisements only if:
    a. The item may be obtained either (i) without any cost or obligation or (ii) in conjunction with the purchase of another item and such conditional terms are clearly and conspicuously disclosed; and
    b. Any mailing or handling costs to obtain the free item are not more than the actual reasonable mailing/handling costs and any such costs are clearly and conspicuously disclosed.
2. In addition, the word "Free" may be used for designated merchandise only as permitted in CAT.
3. The price of the merchandise that is required to be purchased must be the regular, non-inflated selling price of that article, and the "free" or "bonus" offering must be temporary (i.e., may not be offered for more than 60% of the time or such alternative durational percentage applicable to the merchandise under paragraph II.A.3).
4. A valuation price, such as "$ _____Value" for a "free" item, "gift" or "bonus" may be used only when:
    a. The identical item was openly and actively offered for sale by the retail operation or its affiliated nameplate (e.g., Macy's could rely on [redacted]com) at the valuation price for at least fourteen (14) days immediately prior to the event; or
    b. A comparable item from the same vendor was openly and actively offered for sale by the retail operation at or above the valuation price for at least fourteen (14) days immediately prior to the event; or
    c. The identical or comparable item is being offered for sale in the trading area, and the valuation price is a conservative price, which has been substantiated, through acceptable documentation (e.g., surveys), as being at or below the trading area price.
5. Comparable merchandise means merchandise which is of like grade and quality in all material respects (e.g., fabric, design and workmanship).
6. In the case of cosmetic "gift with purchase" promotions where the gift item(s) are packaged in a quantity not previously offered for sale, a valuation price may be used when the item(s)' per ounce price can be determined based upon the price of identical merchandise offered for sale on a different quantity basis (e.g., .45 oz. Creme offered as gift item, usually offered in 7 oz. size for $30.00; gift equivalent value is $1.92);

C. Two for One Price Claims

1. No statement or representation of an offer to sell two articles for the price of one, or any similar phrase, may be used unless the sale price for the two articles is the store operation's own regular price for the single article.
2. A "two for one" or "buy one get one free" event offered by a retail operation constitutes a promotional price for purposes of the durational rules in paragraph II.A.3 above, including offers initiated by manufacturers on a nationwide basis.
3. Manufacturer's rebates or "bonus" offers being offered nationally, with redemption solely through the manufacturer, will not be counted as a promotional period under the durational rules, provided that the retail operation is not taking any markdowns in respect of that promotion.

D. ½ Price Claims

1. No statement or representation of an offer to sell an article at a savings through claims such as "1/2 Price" or "50% Off" or expressions of similar import may be used when the offer is conditioned upon the purchase of additional merchandise.
2. A statement or representation that the purchase of one item is required to purchase another item at a reduced price may be used when this condition is clearly and conspicuously incorporated into the offer (e.g., "Buy One, Get Another at 50% off Regular Price").

E. Lowest Price Claims Relating to a Retail Operation's Former Prices

1. A comparison may be used to describe the lowest price of a calendar season provided it is and will be the lowest price of that season and is used only one time per season.
2. A disclaimer should be included in such ads to identify the applicable season and explain that prices may be lowered as part of a clearance.
3. See CAT for details.

F. Descriptions of Price

1. Complete Purchase Price

   Ads must disclose the complete and unconditional purchase price. Thus, for example, if king size bedding is sold only in sets, the ad must disclose the set, rather than individual unit, price and also disclose the number of units that must be purchased.

2. Disclosure of Any Additional Charges or Elements

   a. Additional charges include, but are not limited to:
      - Delivery or handling charges
      - Assembly charges
      - Restocking fees
      - Installation charges
      - Mail/phone order charges

   b. If merchandise must be delivered, the ad must clearly and conspicuously disclose that fact (e.g., "Store dock pick-ups may not be available in your area."), as well as that there is a fee. Where feasible, provide the actual delivery charge or an approximation of the usual delivery charge. (e.g., "Delivery fee approximately $25 in normal delivery areas.").

c. Any additional services or items required to be purchased for the proper use and performance of the merchandise also must be clearly and conspicuously disclosed. Such services or items include, but are not limited to:
   - Adapters
   - Racks
   - Batteries or bulbs
   - Carts or cabinets
   - Accessories
   - Assembly required
   - Installation Kit
   - Required service contract or carrier fees

d. Optional services or items may be incorporated in the advertisement, but the advertisement must disclose that they are "Optional" and at an additional cost. Examples are:
   - Accessories or blades for food processors
   - Extended service contract for furniture
   - Gold filter for coffee maker

G. Price Matching Claims

1. Claims offering to meet any competitor's lower price (e.g., "We will not be undersold; we will meet (or beat) our competitors' prices") must disclose all material terms and conditions of that offer, including, for example:

   a. Any time limits, such as the date the offer will expire, if applicable, and whether a consumer who purchased an item at the retail operation may take advantage of the offer by receiving a price adjustment within a limited period following such purchase (e.g., "We will match any competitor's price within 60 days of your purchase");

   b. What the consumer must do to secure the price adjustment, such as bring in the competitor's ad or any other proof of a lower price;

   c. Any geographic or store limitations;

   d. The specified products and/or types of stores to which the price matching pledge will apply (e.g., "only identical products or products with comparable specifications" or "only full line department stores") or whether certain types of products or models or competitors will be exempted from the offer.

2. If no terms or conditions are disclosed, this will be considered an "unconditional" price matching claim.

3. Price matching claims should not represent or guarantee that the retail operation's prices are the lowest or are lower than competitors' prices.

4. New price matching claims must be reviewed by the Law Department

H. Comparisons to Competitors' Prices

Comparing a retail operation's prices to the prices of its competitors, including lowest price guarantees, is not permitted. Any exceptions must have the written approval of the Merchandising Principal. Any such claims must be supported by competitive surveys per guidelines provided by the Law Department.

I. "List Price" or "Manufacturer's Suggested Retail Price"

"List price," "manufacturers suggested retail price," and similar terms may not be used as a comparative price.

J. Group Offerings

1. All items listed or pictured under a "sale" banner or "sale" front page in a catalogue must be "sale" items.

   Where "regular" and "value type" (e.g., "EDV," "special purchase, "If purchased separately") priced merchandise and "sale" priced merchandise will appear in an ad or catalogue, the headline or cover should not state "sale" unless:

   a. The items not reduced are clearly set off and identified; and

   b. The "sale" headline or representation indicates that not all items are reduced (e.g., by stating "Sale and other values" or "Sale and other regular and value priced merchandise").

2. Applicable Merchandise

   a. When the merchandise being offered cannot be specified with precision because a "sale" or price reduction includes a large selection but not all of the merchandise in a classification or line, limiting terms such as the following must be used:
      "Selected"
      "Not all Styles"
      "Many"
      "Assorted"

   Such terms may be used only if a "meaningful percentage" (defined as at least 20%) of such merchandise is being offered on the terms advertised.

IV. Miscellaneous - Merchandise

A. Description of Merchandise or Services – Limitations and Condition

1. New/Defect Free

   Unless otherwise indicated, all advertised merchandise must be "new" and not used, second-hand, renovated, remodeled, rebuilt or reconditioned. Merchandise that is not "new" must be advertised with conspicuous disclosure of the condition of the merchandise (e.g., "Reconditioned").

2. Any unusual characteristics or quality limitations of the merchandise must be clearly disclosed in the ad. Such limitations include but are not limited to:
   - Used or reconditioned merchandise
   - Discontinued floor samples or one-of-a-kind merchandise
   - Irregular, seconds, mismatched, soiled and/or damaged merchandise

3. "As Is" Merchandise

   a. The term "As Is" indicates the terms of sale (e.g., final sale even if damaged), not the condition of the goods. The term "As Is" must be accompanied, as applicable, by a description of the merchandise's condition or status (e.g., damaged, floor sample, irregulars, imperfect, seconds, used, reconditioned or rebuilt).

   b. If merchandise is offered for sale or tagged on the selling floor "As Is," advertisements must disclose the terms of sale by conspicuously identifying the merchandise "As Is," along with the condition, as above.

   c. See CAT for disclaimer details.

B. Qualifying Phrases Pertaining to Jewelry

The following types of disclosures should be made in respect to jewelry, as applicable:

1. Carat weight: Ads must either describe carat weight in decimals with the exact or minimum weight or state *"All carat weights (ct. t.w.) are approximate. Variance may be .05 carat."*
2. Gemstone treatments for Macy's: *"Almost all gemstones have been treated to enhance their beauty and require special care, please log on to [redacted]com/gemstones or ask your sales professional."* For [redacted] *"Almost all gemstones are treated and require special care. Please ask your sales associate for details."*
3. Photos: *"Photos may be enlarged or enhanced to show detail"*

V. Credit Advertising

All advertising referencing credit terms (including deferred billing offers) must be approved by the Macy's Law Department.

VI. Advertising Substantiation

All factual claims must be supported by adequate substantiation appropriate to the merchandise and type of claim. This includes, for example, former, current or future prices used in comparatives, along with savings, performance, efficacy, health, safety, environmental, fiber content and country of origin claims and representations concerning delivery dates for mail and phone orders.

Attachment A [redacted]
Specific State Law Requirements or Modified Policies

Attachment A [redacted]
Specific State Law Requirements or Modified Policies

Attachment B-[redacted]
Modifications to Durational Standards

[redacted] bases its promotional calendar on the 69/31 standard and further follows that standard in those states where required by law. The following states effectively impose a 69/31 standard: CT, MA, NJ, WI and RI (gemstones and precious metal only).

Subject to approval from the Merchandising Principal, Macy's may offer items at a promotional price up to 75% of the time in fashion-driven FOBs, and up to 70% in Furniture/Mattresses/Rugs in other states.

In Georgia, given an Assurance of Discontinuance, Mattresses and Fine Jewelry must remain on a 50/50 calendar.

All discounts above 50% must be approved by the CEO or responsible GMM.

Attachment B-[redacted]
Modifications to Durational Standards

[redacted] bases its promotional calendar on the following on-sale/off-sale standards:

Fine Jewelry: 50/50

Furniture and Mattresses: 60/40

All other families of business: 65/35

All discounts above 50% must be approved by the CEO.

Product Safety Policy and Procedure

This is a summary of product safety polices and procedures for complaints about unsafe products reported at our stores. For detailed instructions on handling product safety complaints, refer to each organization's Manual of Policies and Standard Procedures.

Customer complaints about products are generally handled by either (1) Risk Management or (2) the stores and/or Macy's Credit and Customer Service (MCCS). How complaints are handled depends on whether the complaint involves safety. As a general matter, (1) Risk Management handles safety complaints involving bodily injury or damage to personal property, and (2) the stores and MCCS handle all other product complaints or inquiries (e.g., routine returns, quality issues, questions about the product).

The Law

Section 15 of the Consumer Product Safety Act requires that a company report to the U.S. Consumer Product Safety Commission (CPSC) a product that (1) fails to comply with a consumer product safety rule, (2) contains a defect that could create a substantial product hazard, and/or (3) creates an unreasonable risk of serious injury.

The Stores must fill out Product Safety Report Forms and fax them to their designated Product Safety Coordinators and their contacts at the Law Department and Risk Management.

Processing Product Safety Complaints At The Stores

If a customer complains that a product allegedly has caused or could **cause bodily injury or personal property damage,** the sales associate must immediately contact and/or escort the customer to a store manager or the designated Store Executive/Duty Executive. Complaints received through the Company's internet retail sales sites should be referred to the Internet Customer Service team at MCCS.

The designated Store Executive/Duty Executive will handle the complaint by:

- Obtaining and retaining the product in a secured location until the complaint has been resolved. The Security Manager may be required to secure the item.
- Filling out a Product Safety Report Form.
- Faxing the completed Product Safety Report Form to the organizational:
  - Product Safety Coordinator.
  - Law Department. If the product is Private Label Merchandise, the Law Department will also notify Alice Au of the New York Law Department.
  - Risk Management manager.
- If the customer wishes to return the product, the designated Store Executive/Duty Executive must handle the return transaction. The Sales Associate will NOT process the return.

Processing All Other Product Complaints NOT Involving Safety

The Sales Associate should follow organizational procedures for handling general customer complaints involving non-safety related issues such as routine returns, quality, or product information. Such complaints are handled at the store, by the designated store executives, or referred to the designated Customer Service team at MCCS.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is Jackson Lewis P.C., 801 K Street, Suite 2300, Sacramento, California 95814.

On November 6, 2015, I served a true and correct copy of the within document described as:

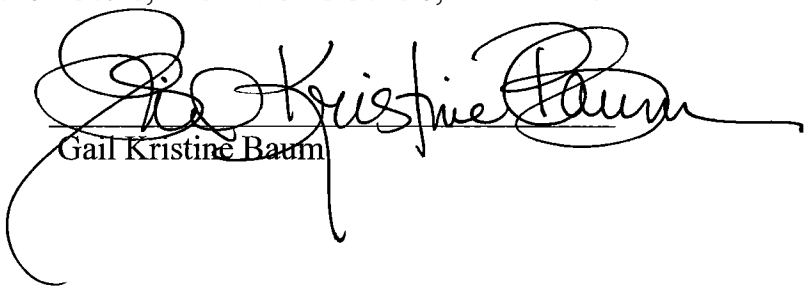
APPELLANT'S APPENDIX

on the parties in this action as follows:

BY ELECTRONIC SERVICE: I forwarded a true and correct copy of the within document electronically, via TrueFiling, to Plaintiff/Respondent's counsel and Defendant/Appellant's co-counsel, as indicated on the attached Service List, between approximately 4:00 p.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of November, 2015 at Sacramento, California.



Gail Kristine Baum

SERVICE LIST

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